Supreme Court, U.S.
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OFFICE OF THE CLERK

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(2)

No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME I

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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May 18, 2009

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FOREWORD

The relief sought in Defendants' May 18, 2009 Petition for Certiorari is protection of the federal Due Process and Equal Protection rights violated by a $20,720 attorney fees award – for simply reading Defendants' various briefs, with no connection to any written (responding brief) or oral (discussion at trial court or appeal hearings) work product, and having no connection to any issue where Plaintiff had been found to be the prevailing party.

This aspect of appeals which arose from *Paxinos v Halliwell & Parker* is greatly complicated by the off-the-record turnover of $10,118 of Defendants' funds, at a time when the trial court had lost any semblance of jurisdiction to act on this matter (and which was not discovered by Defendants until three months afterwards). The evasions and subterfuges involved in this turnover are set forth in Section C.

The two-front squeeze on Defendants during most of the 11-month time period where the $20,720 fees award was considered in Superior Court and appeals from this award, was further complicated by OEX (Order of Examination) proceedings whose purpose was premature enforcement of the $20,720 award.

The eight OEX hearings which Defendant James Parker was dragged through, and rulings by Judge Robert S. Boyd (of July 23, 2008, January 20, 2009 and April 17, 2009) which belatedly admitted that he had acted prematurely, are the focus of Section D.

The focus of Section E is the unexplained May 6, 2008 Fees Award by Trial Court Judge Elaine Rushing, the various maneuvers leading up to the unexplained upholding of this award by the Sonoma County Superior Court Appellate Branch, and the unexplained denials of discretionary review by the California Court of Appeal on January 2, 2009 (in A123622) and the California Supreme Court on February 18, 2009 (in S169634).

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FILED
NOV 21 2007

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants' November 21, 2007 Exemption Claim (How Circumvented)

Contemporaneous facts re 11/26/07 directive

There is no aspect of the case where precisely what the court did is more important, than in the turnover of $10,118 of Defendants' money which the Sheriff was holding for safe keeping, to Plaintiff BEFORE we were able to enforce the automatic stay required by Section 916(a) California Code of Civil Procedure. The key augmentation of a docket printout is listed at the May 7, 2008 point in this chronological listing (when a copy of this document was provided to Defendants, after three months of repeated requests). However, the rest of the document is non-controversial and is reproduced here.

The top line of the printout from the court computer says:

"11/26/2007 14:24 707-521-6756 Dept 19 PAGE 17"

Spliced in just below (almost overlapping the top line is:

"MCV-191306 PAGE 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CIVIL PROCEEDINGS AS OF 11/21/2007
PAXINOS V PARKER
06/01/2007

HALLIWELL, MICHAEL (APPELLANT CIV DEFD)
PARKER, JAMES (APPELLANT, CIVIL DEFDNT)
PAXINOS, CHRYS. (JUDGMENT CRED, PLAINT)
(AT BLONSKI, KADIN)
(AT JENSEN, CHARLES T)"

In both the "Sheriff's version" and version Defendants downloaded in preparation for the November 20, 2008 hearing on the largest ($20,720) of Judge Rushing's fees awards, the text of the Courtroom Minutes which comes next, is the same (and have no suggestion of any activity by the court after 11/20/2007). However, in the Sheriff's version there is a large amount of white space at the bottom

of the page, where the following entries appear in the more current version:

"11/21/2007, NOTICE OF APPEAL 12/03/2007 at 8:00 am CCO, DESIGNATIONS AP HALLIWELL, MICHAEL J; AP PARKER, JAMES; RS PAXINOS, CHRYSANTHE E; PRO PER APPELLANT; NOTICE DESIGNATING A REPORTER'S TRANSCRIPT – 12/07/2007 at 8:00 am CCO, COUNTER DESIGNATIONS; AP HALLIWELL, MICHAEL J; AP PARKER, JAMES. 11/26/07 OPENING BRIEF FILED; RESPONDENT'S BRIEF DUE 12/17/06 – 12/18/2007 at 8:00 am CCO, BRIEFS; AP HALLIWELL, MICHAEL J."

There is a clear pattern in the sending out of Notification of Filing of Notice of Appeal. When it does not appear to have jurisdictional significance, the Notification goes out almost immediately (on the same day for 7/24/07; the next day for 8/29/07 and 10/17/07), but when the Notice of Appeal interferes with Judge Rushing's intended course of action it goes out much later (6 days later for 9/26/07, so as to leave the field clear for Charles Jensen's 10/02/07 Writ of Execution; 6 days later for 11/21/07 so the Sheriff will have time to turn over the money seized

by the Writ of Execution on 11/27/07). Judge Rushing's handling of her responsibility as Supervising Judge of the Civil Division is about as subtle as President Clinton's bombing a "terrorist" aspirin factory in Sudan, on the day of a key Impeachment vote in the House of Representatives. Even worse is Judge Rushing's bogus docket entry for 11/7/07: "NOTICE OF ENTRY OF JUDGMENT, SERVED 9/25/07" If Judge Rushing had not simply signed her order and placed it in the file, Defendants' would have been too late with their November 21, 2007 Notice of Appeal. But since a 90-day deadline is applicable to unserved orders, Judge Rushing is in the same position as a motorist who speeds up when the light turns amber, and collides with a couple of cars who are going through after their light turns green. There is NO proof of service to support Judge Rushing's bogus 11/07/2007 claim, which is one of the reasons why Appellate Branch Presiding Judge Chouteau has stonewalled Defendants' File Integrity Appeal, and manipulated appeal schedules to create two and three front situations for Defendants.

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY Courtroom 19
Date: November 26, 2007 Chris Reynoso,
Hon. ELAINE RUSHING, Judge Deputy Clerk

CHRYSANTHE PAXINOS, Action # MCV-191306
Plaintiff vs. **DIVULGED** MAY 07 2008
JAMES PARKER, (Correct Copy of Original on File)
et al, Defendants ISSUE: CLAIM OF EXEMPTION
PROCEEDING: 11/20/07 Law & Motion Calendar
Court's previously published tentative ruling:
Appearance Required Counsel Charles Jensen is present on behalf of Plaintiff Chrysanthe Paxinos. Defendant James Parker, self represented party, is present. Defendant Michael Halliwell, self represented party, is present. Court notes that this motion relates to Defendant James Parker only, and not to Defendant Michael Halliwell. Also, the Court notes that since Defendant Halliwell is not a licensed attorney, he may not speak on behalf of Defendant James Parker. Additionally, the Court states that when a Court considers a claim of exemption, the only documents that are under consideration with regard to the motion are the claim of exemption itself and the notice of opposition. Defendant Parker raises issue with Court with regard to Defendant Halliwell not being able to speak on his (Parker's) behalf, alleging Mr. Halliwell has standing in this action, and therefore should be allowed to speak. Court DENIES Mr. Parker's motion (stating that Mr. Halliwell is not a licensed attorney). Upon conclusion of oral argument, Court orders the following: Court DENIES Claim of Exemption of Defendant James Parker. **RECEIVED 2007 NOV26**
(Elaine Rushing)(11-26-07)**SonomaCounty Sheriff**
HON. ELAINE RUSHING **Civil Bureau 3:17 PM**

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ENDORSED
FILED
JAN 22 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Complete Transcript Appendix Pursuant to CRC Rules 8.706(C) and 8.766

[Since the Appellate Branch hearing was scheduled for January 24, 2008, it was obviously too late on January 22, 2008 for supplemental briefing based on the transcripts which Defendants filed here. They argued in behalf of their appeals where these transcripts were of vital importance.] This appendix is in support of full briefing and a separate hearing (perhaps on March 27th, April 24th, May 22nd, and June 26th) for the aforementioned three later appeals, and the one noticed on November 21, 2007, which is in fact already slated for consideration on June 26, 2007).

[Judge Rushing never served her Order of September 25, 2007 and disregarded Defendants' September 26, 2007 Notice of Appeal from her September 25, 2007 bench ruling, which appears (at CR-1841 to CR-1842) in the transcript filed here (at 475:27 to 476:2):]

> **The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,00 in attorney's fees against Mr. Parker only.**

Complete Transcript Appendix says (at CR-1809):

It is hard to understand on what basis Judge Rushing provided a signed copy of her order for $10,000 in attorney's fees to Plaintiff's counsel only, but she apparently did this to facilitate Charles Jensen's "stealth" attempt to do an end run around the governing precedent (*Ziello v Superior Court* (1999) 75 Cal.App.4th 651) barring enforcement of fees-only judgments pending resolution of an appeal.

[Judge Rushing operated even further "below the radar" in her handling of Defendants' Claim of Exemption re the $10,000 fees award. Defendants did not find out how the $10,000 turnover had been

accomplished, until May 7, 2008 when the Sheriff's Department finally agreed to provide the document Judge Rushing used (with nothing ever appearing in the case file to indicate what she had done). It is now clear that Judge Rushing acted in accordance with Charles Jensen's instructions at the November 20, 2008 hearing (CR-1848), in this transcript excerpt (482:13-28): Here, James Parker's testimony is *italicized*, Charles Jensen's remarks are underlined, and Judge Rushing's are in **bold type.**]

> JAMES PARKER: *The August 30th appeal does cover the $10,000 award of fees, and my name is on that appeal.*
>
> JUDGE RUSHING: **The order is September 25th.**
>
> CHARLES JENSEN: That is correct, Your Honor. And it's my understanding, and I believe I'm correct, that you can't file an appeal for anything that may conceivably happen at some time in the future.
>
> JUDGE RUSHING: **Yes, I agree. So the Claim of Exemption is formally denied at this point.**
>
> CHARLES JENSEN: Your Honor, procedurally madam clerk is to send a minute order to the sheriff.
>
> JUDGE RUSHING: **Correct.**

CHARLES JENSEN: Then no formal order will be required of this Court.

JUDGE RUSHING: **She will.**

CHARLES JENSEN: Thank you, Your Honor.

[Defendants' Analysis notes (at CR-1815-1817).]

Charles Jensen at no point (not in his Opposition to our Claim of Exemption as required by CCP Sec 703.560, not at the hearing on the Claim of Exemption, nor in any subsequent filing) alleged that the bank account being levied was not exempt from attachment for a judgment consisting solely of costs and/or attorney's fees as provided in CCP Sec 917.1(d) as applied (see CR-1453 to CR-1457) by *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655; *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303; and *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475). CHARLES JENSEN'S BARE STATEMENT THAT THE CITED STATUTE AND SUPPORTING AUTHORITY "DO NOT APPLY TO JAMES PARKER" ALSO CLEARLY FAILED TO SATISFY HIS OBLIGATION UNDER CCP Sec 703.560(b) requiring that his opposition shall include: "A statement of the facts necessary to support the allegation." Rather than seeking a

default judgment, pursuant to CCP Sec 703.580(f) on account of Charles Jensen's violations of CCP Secs 703.570(b), 703.560(a) and 703.560(b), Defendants invoked the power of the Court to consider amendments to filings, pursuant to CCP Sec 703.580(a) "in the interest of justice." This avoided requiring a court which is faced by insufficient pleadings, pursuant to CCP Sec 703.580(c), to "order the hearing continued for the production of other evidence, oral or documentary."

As she has done on every occasion where black letter law pushes her in a direction she does not wish to go (JUDGE RUSHING NEVER CITED A SINGLE SUPPORTING CASE FOR ANY OF HER CHALLENGED RULINGS), Judge Rushing made up for by being emphatic, what she lacked in supporting authority. She continued: "**Wrong. Wrong, sir. Wrong. I just told you the only pleadings on a claim of exemption are the claim of exemption and the opposition and that's it.**" (Transcript at 481:19-21)

Dated: this 22nd day of January, 2008

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No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Appellants' Notice to Presiding Judge Boyd re Circumvention of Claim of Exemption

The January 24, 2008 Appellate Branch hearing for *Paxinos v Halliwell and Parker* seemed to end on a procedural high note, as the parties were informed that disposition of the jury trial aspects of appellants' grievances would be by written opinion. Whatever the substantive decision, this cannot help but be of assistance to future litigants in avoiding the procedural traps which have plagued proceedings in this case. After some discussion of problems relating to the unavailability of transcripts for fees-related hearings (until long after filing deadlines) it was agreed that this aspect of the case would be reserved for a later appeal. However, an answer by Charles

Jensen at the very end of proceedings gave rise to concerns which have become ominous after further investigation. When asked whether "the property was still at issue" Respondent's counsel answered with words to the effect that "**they** never appealed the judgment" which forced their eviction. This is simply not true. Judge Rushing refused to consider defendants' motion for a mistrial or even allow it to be filed. Judge Rushing also refused to take cognizance of a more modest motion for a "stay of execution" (which was referred to Judge Von Der Mehden who denied it, based on a false affidavit which asserted that James Parker posed a threat to persons "identified at trial" who had lodged complaints against him). However, the July 24, 2007 Notice of Appeal (which encompassed all relief denied to Defendants before, during and in the immediate aftermath of the trial) does not apply to James Parker (according to Charles Jensen) because only Michael Halliwell signed the notice of appeal. This informational notice deals with an insidious and surreptitious application of Charles Jensen's "divide and conquer" doctrine in the "second front" (freezing and ultimately seizing $5,059 of Michael

Halliwell's money and an equal amount of James Parker's money) he opened at a critical juncture in pre-appeal briefing. (CR-1852:11-22)

Defendants felt that they had undone the damage done by the false assertion that prior appeals from Judge Rushing's (unexplained) award of $10,000 in fees to Charles Jensen "do not apply to James Parker" (CR-1179 to CR-1181) by filing a jointly signed notice of appeal CR-1204) seeking review of the unserved orders on this subject by Judge Rushing. (CR-1853:2-5)

There was not the slightest trace of activity by Judge Rushing in the Case File after the November 21, 2007 filing of Defendant's Claim of Exemption, and the only activity by counsel for Plaintiff was Respondent's (December 17, 2007) response to Appellants' Opening Brief. (CR-1853:15-17)

Judge Rushing's Courtroom Minutes (CR-1015) indicate that she placed an order in the file establishing Chrysanthe Paxinos as judgment creditor in the amount of $10,000 and James Parker as judgment debtor in like amount. Although no notice of this action was provided to Defendants, on September 26, 2007 they appealed (CR-710) the award of

$10,000 in attorney's fees to Charles Jensen on the basis of Judge Rushing's expressed intention (in order to facilitate the earliest possible preparation of a transcript for the September 25th hearing). Defendants also felt obliged to file an October 17, 2007 appeal relating to the integrity of court files (CR-1059), and in the process of preparing their designation of the record on appeal discovered the order (CR-1094) which Judge Rushing inserted in the file on September 25th. On October 25, 2007 the Sheriff notified James Parker of a levy against his bank account for $10,118 and his bank informed him of this on the same date (CR-1096). James Parker filed a claim of exemption on November 3, 2007 invoking CCP 917.1(d) and *Ziello v Superior Court* (1999) 75 Cal.App.4th 651 which preclude the enforcement of money judgments consisting only of attorney's fees and costs until AFTER appeals from such judgments have been resolved. (CR-1856:14 to CR-1857:5)

Charles Jensen's implication at the January 24, 2008 hearing (in his answer to Judge Hardcastle) that the really important financial issues had already been settled, caused Michael Halliwell to

recall what he had written on January 10, 2008 about Judge Rushing's attitude:

> Judge Rushing made it clear what her trusted source of information was, at the outset of proceedings, in this frank admission of judicial partiality. "I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up." (Transcript at 163:23-25)

Judge Rushing slavishly followed Charles Jensen's lead on the alleged invalidity of Defendants' August 29, 2007 appeal from the award of $10,000 in attorney's fees to Mr. Jensen. Was it somehow possible that Judge Rushing's determination to "deliver the goods" to Charles Jensen would cause her to ignore Defendants' appeal of November 21, 2007? James Parker used the contact number for the Sheriff's Department (acquired in connection with our Claim of Exemption filing) seeking to confirm that Defendants' $10,118 was still sequestered in the Sheriff's special account. The Sheriff's clerk who answered (but could supply no details) told us that our money was GONE, delivered to Charles Jensen on Tuesday November 27, 2007. Defendants' timely joint appeal from the Order of September 25th completely eliminated the

"James Parker has no appeal" (Transcript at 479:11) rationale for Judge Rushing's November 20th ruling. However, this made no difference to Judge Rushing, as she simply did what she indicated she would do on November 20th. (CR-1859:15 to CR-1860:9)

Because the rationale for ruling in Charles Jensen's favor had been eliminated by a timely and totally unambiguous appeal by James Parker and Michael Halliwell from the Order of September 25, 2007, Judge Rushing eliminated ANY reference at all to the grounds for her decision from her 11/20/2007 Courtroom Minutes. Although the Minutes start with this clear statement: "ISSUE: CLAIM OF EXEMPTION" only one of 22 lines in the Minutes address this substantive issue, saying: "Court DENIES Claim of Exemption of Defendant James Parker." (CR-1861:6-12)

When one Googles "Judge Elaine Rushing judicial misconduct" [Defendants were led to] Commission on Judicial Performance Inquiry #177 Decision and Order imposing public censure." (CR-1863:16-18)

[Inquiry #177 quotes include these passages:]

Judge Rushing's conduct violated the Code of Judicial Ethics, canons 1 (failing to observe high

standards of conduct so that the integrity and independence of the judiciary will be preserved) and 2A (failing to comply with the law and failing to act in a manner that promotes public confidence in the integrity of the judiciary), and constituted prejudicial misconduct. (CR-1864:19-21) When Firefighter Ramos found Judge Rushing sitting in the driver's seat, Judge Rushing falsely told him that she had not been the driver. She said that an unknown woman had been the driver, and then that an unknown man had been the driver. (CR-1865:3-5)

She said she had been sitting in the back seat (even though the car had no back seat). When Officer Hole-man asked Judge Rushing where the keys to the car were, she first told him that she thought they were in the car, and then said that the male driver had taken the keys with him when he and the woman had left the scene on foot, walking back toward the friend's house. (CR-1865:9-12)

Judge Rushing identified herself to Firefighter Ramos by showing him her Sonoma County Court Judge identification badge. When Judge Rushing was asserting her false story that she was not the driver to Officer Holeman, she repeatedly told him that she was a superior court judge in Sonoma County. She also repeatedly requested that Officer Holeman call her husband who, she informed the officer, was an appellate court justice. (CR-1865:21-23)

Judge Rushing then told Officer Holeman that in her courtroom she goes against court policies for CHP and other officers, and that he should

extend that courtesy to her. She persisted in telling Officer Holeman that she was a superior court judge and that her husband was an appellate court justice. (CR-1866:12-14)

Judge Rushing's conduct following her attempts to drive while drunk is particularly egregious. Falsifying stories to persons seeking to offer early assistance, and to emergency personnel and the arresting CHP officers reflects poorly on Judge Rushing's integrity and without doubt seriously negatively impacts the public perception of her, and of the judiciary in general. Judge Rushing left the scene after colliding with a residential wall, lied to citizens offering her initial assistance, and provided a fabricated story to emergency personnel and the investigating officers that she was not the driver. None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v Commission on Judicial Performance* (1989) 49 Cal. 3d 826, 865, that honesty is a "minimum qualification" expected of every judge. Judge Rushing also repeatedly invoked her judicial office and that of her husband in an effort to avoid arrest and otherwise receive preferential treatment. (CR-1867:16-23)

[But Judge Rushing "copped a plea" as follows:]

Judge Rushing's veracity and integrity have been seriously impugned. Her attempts to obtain preferential treatment, however, were unsuccessful. There was no on-bench misconduct and there was no direct adverse affect on the administration of justice per se. Several people, primarily from the

legal community, have submitted letters in support of Judge Rushing remaining in judicial office. (CR-1868:6-18)

Bob Egelko reports in the June 9, 2006 *Chronicle*:

Rushing 58, was appointed by Gov. Pete Wilson in 1992 as the first woman on the Superior Court bench in Sonoma County. She had practiced business law since graduating with honors for UC Hastings College of Law in 1979. She last appeared on the ballot in 2004 and won a six-year term. (CR-1868:18-20)

[We also cited more judicial abuses (CR-1869:11-21):]

Section 1. Attorney's-fees-only judgments are not enforceable while an appeal is pending cites *Nielsen v Stumbos* (1990) 226 Cal.App. 3d 301, 303-304; *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475; and *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655. **Section 2. Lacking any supporting legal authority, Judge Rushing blocks Defendants' case** cites *People ex rel Dept. of Public Works v Malone* (1965) 232 Cal.App. 2d 531, 537; *Gray v Justice's Court* (1937) 18 Cal.App. 2d 420, 423; *Paradise v Nowlin* (1948) 86 Cal.App.2d 897, 898 and *Wilde v Superior Court* (1942) 53 Cal.App. 2d 168, 173. **Section 3. Judge Rushing's effort to hide behind initial pleading limitations to duck issues** cites the parts of CCP Section 703.520 et seq. Judge Rushing ignored in her ruling. **Section 4. Judge Rushing's probable method of transferring funds on November 27, 2007** cites Judge Rushing's announced intentions on November 20, 2007, which she appears to have

followed (while leaving no trace in the official record) in spite of legal obstacles she chose to ignore.

[Our plea to Judge Boyd ends (CR-1880:1-6):]

Is it really possible that a trial court judge would knowingly try to vitiate Defendants' legal rights in these circum-stances and resort to evasions and misrepresentations to conceal what she was doings? For a judge without a record of violating judicial canons of ethics, one would presume not. Consider-ing Judge Rushing's actual history, in *Paxinos v Halliwell and Parker* and before that, the best approach may be that of Judge John Sirica in the Watergate matter: **Follow the evidence wherever it leads.**

Dated: this 28th day of January, 2008

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SUBMITTED
FEB 4 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Appellants' Petition to Presiding Judge Owen re Changed Appeal Record Designation Policy

The integrity of Court Files has been an issue from the outset of this case. In proceedings before Judge Gary Nadler, Plaintiff's Proofs of Service and Form UD-150 were NOT in the Case File when inspected, photocopied and initialed by window clerk "C.O." on June 11, 2007. These documents turned up much later (inserted as if they had been filed on June 6, 2007) and played a key role in Judge Nadler's denial of a continuance which was probably the most decisive factor in our case. Because of this history, Defendants were allowed to supply copies of all documents marked with Case Record sequential numbering for use in their appeals. Chronological Index (CI) 00460 to 00836, is our first such

Designation; CI 01124 to 01260 is our second appeal; CI 01481 to 01725 is for our third appeal; CI 01734 to 02014 is for our fourth appeal. At the behest of Judge Elaine Rushing, on November 27, 2007 the County Sheriff turned over $10,118 of our money to Charles Jensen not-withstanding our November 21, 2007 Claim of Exemption and the failure of Charles Jensen to file any Opposition to our November 21st Claim. From the afternoon of November 21, 2007 through the afternoon of December 17, 2007, Defendants made several inspections of the Case File, and found nothing related to this matter. We learned of this turning over of our funds on January 25, 2007, but the file was unavailable then and the docket shows no activity not related to appeal briefing and scheduling from 11/26/2007 to 1/22/2008. Our last Designation concludes (CR-1358) with a Proof of Deposit per Rule 8.706F of appeals documents to Judge Elaine Rushing. By "direction of the judges" court clerks refused to allow Defendants accompanying proffered Designation in lieu of a missing Chronological Index. It appears that this policy change may have been influenced by Assistant Presiding Judge Nadler or by Supervising Civil

Court Judge Rushing, and thusly, it falls short of minimum Due Process of Law standards. It should be reversed forthwith, and appeals briefing should be reinstated at once with respect to the integrity of files issue.

Dated: this 4th day of February, 2008

Michael Halliwell
Defendant pro se

James Parker
Defendant pro se

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APR 01 2008

No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Appellants' Petition to Presiding Judge Owen for Rulings on Hearing Motions Filed 1/22/08

Formally, this is a request for a ruling on Defendants' petition for separate hearings on their Notices of Appeal – a matter which has been pending for ten weeks since this request was made (copy attached) on January 22, 2008. Substantively, this request asks that the Sonoma County Superior Court honor the policy affirmed in the Appellate Branch Order of February 5, 2008 (that the essential supporting documents for an appeal be available before the briefing process starts). At the January 24, 2008 hearing, the Court agreed that this was NOT the case with respect to the attorney-fee-related appeals Noticed by Defendants on August 29,

2007 and September 26, 2007. In any event, the Sonoma County Superior Court should not relinquish jurisdiction (by any action or failure to act) until the transcript of the Appellate Branch hearing of January 24, 2008 is available – and Defendants have an opportunity to seek follow-through on the Court's commitments made at that time.

Dated: this 31st day of March, 2008

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

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Court of Appeal
First District
FILED
JAN 2 2009

COURT of APPEAL FIRST APPELLATE DISTRICT
Division Two **Case # A123622**

Michael Halliwell, et al,
Petitioners vs.

Sonoma County
Case # MCV 191306

Superior Court of California, County of Sonoma, Respondent;

Chrysanthe Paxinos,
Real Party in Interest

Petition for Mandamus

Citing **4/18/08** Complaints

re Condition of Case File

Appellants' January 2, 2009 Mandamus Petition notes: Defendants point out in their **April 18, 2008** Petition:

> **7a)** On October 22, 2007 Defendants filed their "Petition to Appellate Clerk Supervisor Donald G. Lewin Regarding the Case File" (CR-993 to CR-1061) and Charles Jensen apparently responded to this with his $10,188 assault on James Parker's bank account (thereby violating *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, because judgments consisting only of attorney's fees are not enforceable during the pendency of an appeal). Defendants responded with their October 29, 2007 Memorandum on Charles Jensen's Circumvention of Code of Civil Procedure Sec 917.1(d) (CR-1062 to CR-1080) and November 3, 2007 Exemption Claim and Supporting Affidavit (CR-1081 to CR-1108). Charles Jensen may have

anticipated from his familiarity with the time it takes (after having been notified that hearing reporter's transcripts have been completed) to prepare a chronological index, that a briefing order on Defendants' appeal Noticed on July 24, 2007 would be forthcoming shortly (it was filed on November 5, 2007). His opening this "second front" certainly had a disruptive effect on Defendants' ability to prosecute heir appeal.

7b) The substance of Defendants' November 21, 2007 appeal seeking to enforce the *Ziello* decision has yet to be considered by the Appellate Branch, but it is greatly intertwined with the sweeping scope of their affirmation order of March 6, 2008. Charles Jensen's further prosecution of the "money grab" aspect of the case was certainly designed to put maximum pressure on Defendants during the three weeks they had to prepare their Opening Brief pursuant to the November 5, 2007 briefing schedule. On November 7, 2007 Charles Jensen presented Defendants with his Opposition to their Claim of Exemption which said nothing at all to explain the following statement of opposition "(1) CCP Section 917.1 et seq, does not apply to JAMES PARKER (2) The cited case, ZIELLO v. SUPERIOR COURT (1999) 75 Cal.App.4th, 651, does not apply to Defendant JAMES PARKER." (CR-1112).

7c) In scheduling his Opposition for a November 13, 2007 hearing (CR-1111), Charles Jensen flouted the requirement printed plainly on the form: "A copy of this Notice of Opposition and Notice of Hearing must be served on the judgment debtor and other claimant at least 10

days *before* the hearing." Both sides showed up for the scheduled November 13, 2007 Exemption Claim Hearing (which Judge Rushing cancelled without notice to the parties, because she wanted to move her normal Monday activity, pre-empted by the Veterans Day Holiday, into this time slot). Defendants had to use up whatever forbearance from Judge Rushing they had left, by opposing her insistence (supported by Charles Jensen) that the hearing be moved to November 14, 2007, even though this disrupted their plans and still did not satisfy the 10 day notice requirement.

7d) At a rescheduled November 20, 2007 Exemption Claim hearing Defendant Michael Halliwell was not allowed to speak at all (not even to explain his standing to oppose the motion, which cost him $5,059). Charles Jensen revealed that his ground for Opposition was that neither the August 29, 2007 or the September 26, 2007 Notice of Appeal was effective, contrary to the clear mandate of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. However, because Judge Rushing had never served her order of September 25, 2007 on Defendants, and Plaintiff had not done so either (in spite of knowing that the order was in the file, and acting on this fact), the time limit in CRC Rule 8.751(a) (1) or (2) was not appli-cable. Defendants were therefore able, on November 21, 2007, to unambiguously perfect their appeal from the September 25, 2007 order, within the 90 day time limit under CRC Rule 8.751(a)(3). (CR-1204 to CR-1210)

7e) Immediately after filing their Notice of Appeal, Defendants renewed their Claim of

Exemption on the morning of November 21, 2007 at the office of the Sonoma County Sheriff, citing the fact that they had cured the defect which was the basis of Judge Rushing's ruling announced on November 20, 2007. Plaintiff's attorney never filed an Opposition challenging the fact that his (undisclosed until the November 20, 2007 hearing) ground for asserting that *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 655 did not apply to James Parker, had been eliminated. Charles Jensen's failure to renew his Opposition also eliminated the possibility of any other ground. Defendants therefore assumed that their $10,188 was still in the Sheriff's holding account, until a remark by Charles Jensen at the Appellate Branch January 24, 2008 hearing caused them to suspect otherwise.

7f) What Defendants then learned from inquiries at the Sheriff's Department is described in their January 28, 2008 Appendix for Presiding Judge Boyd re Circumvention of Their Claim of Exemption without Any Opposition Being Filed or Any Recorded Judicial Authorization (CR-1869 to CR-1880). The following summary should suffice to demonstrate that this aspect of the case has lurched into the domain of Appellants' October 17, 2007 "Integrity of Files" appeal. **i)** According to the Sheriff's representatives no action was taken to initiate a release of the $10, 188 in dispute to Charles Jensen until after the long Thanksgiving Day weekend, and the Sheriff's Department did not do so until November 27, 2008. **ii)** When Judge Rushing returned to work on Monday November 26, 2007 she certainly saw Appellants' Endorsed Filed November 21, 2007

Notice of Appeal Relating to Judge Rushing's Order Facilitating Charles Jensen's Seizure of $10, 118 from James Parker and Michael Halliwell, which starts out: "Defendants James Parker and Michael Halliwell hereby appeal Judge Rushing's Order of November 20, 2007 AND her supporting Order of September 25, 2007 (which has never been provided to the parties, but simply signed and placed in the Case File.)" (CR-1204:11-13) **iii)** The Sonoma County Sheriff's staff does not send a Claim of Exemption to the Court until after Opposition to such a claim has been provided to them, but they informed Judge Rushing of the existence of Defendants' November 21, 2007 Claim of Exemption, when she contacted them on November 26 or 27. As inspection of the eleven entries in the electronic docket in MCV 191306 later than 11/05/2007 and before 12/07/2007 shows, Judge Rushing decided to pretend that Defendants' November 21, 2007 Claim of Exemption was never made, and that she acted only to reject James Parker's Claim of Exemption recorded on 11/08/2007. There is no trace of any action on this aspect of the case after 11/20/2007 in the electronic docket or the Case File, and Judge Rushing certainly never informed Defendants of whatever action she took by phone or in writing (the Sheriff's staff refuses to say which, saying only "check the Court File"). (CR 2146:15 to 2149:16) (Id. at 60:1to 61:25)

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SUBMITTED
MAY 12 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum to Sheriff Cogbill re Circumvention of 11-27-07 Exemption Claim

If one reads the electronic docket for the month of November 2007 in this case, it appears that there is no connection between Defendants' November 21, 2007 Notice of Appeal and Judge Rushing's disposition of Defendants' Claim of Exemption based on the holding of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, 655 that during the pendency of an appeal limited to a judgment awarding costs, including attorney's fees, CCP Sec 917.1(d) bars enforcement of the judgment. However, recently provided documentation from the Sonoma County Sheriff clearly shows that Judge Rushing took a series of actions, which were based on ignoring the mandate of California Rules of Court Rule 8.750: "A Notice of appeal shall be liberally construed in favor of its

sufficiency" and then pretending that Defendants' Appeal of November 21, 2007 (which cured the imagined defects of their prior appeals) did not exist. On November 26, 2007 Judge Rushing provided to the Sheriff, Courtroom Minutes stripped of any mention of the grounds of her decision (that James Parker had not in fact appealed from the $10,000 award of attorneys fees against him) so the Sheriff could not see from Defendants' November 21, 2007 Claim of Exemption (which was accompanied by a copy of their November 21, 2007 Notice of Appeal), that there was no legal basis for Judge Rushing's ordering the Sheriff to turn over $10,118 of the frozen assets of James Parker to Charles Jensen. To provide legal cover for this maneuver, Judge Rushing inserted a bogus entry into the 11/07/2007 electronic docket, "NOTICE OF ENTRY OF JUDGMENT, SERVED 9/25/07" to make it appear that Defendants' November 21, 2007 Notice of Appeal was not timely. This document reviews the case history, to place these actions in context. (CR-2396)

Dated: this 12th day of May, 2008

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James Parker & Michael Halliwell
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Court of Appeal
First District
FILED
NOV 19 2008

COURT of APPEAL FIRST APPELLATE DISTRICT
Division Two **Case # A123226**

Michael Halliwell, et al,
Petitioners vs.

Sonoma County
Case # MCV 191306

Superior Court of California, County of Sonoma, Respondent;

Chrysanthe Paxinos, Real Party in Interest

Petition for Mandamus

Citing 1/24/08 Comment

re Frozen Funds Turnover

Appellants' November 19, 2008 Petition for Mandamus to require a rehearing analyzes appeal briefing:

> Respondent observes: "*Respondent would point out that Sheriff Cogbill to the best of our knowledge was not personally involved with Parker and associate.*" Defendants engaged in protracted conversation with employees of the Sheriff's Civil Division immediately after they began to suspect, as a result of a remark by Charles Jensen at the January 24, 2008 hearing, the existence of "below the radar" activity to enforce a fees judgment, which should have been held in abeyance pursuant to *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651 and CCP 917.1(d). Defendants met again with Sheriff's employees immediately after the May 6, 2008 hearing to make sure there would be no

repetition of such action by Judge Rushing (without informing Defendants). Civil Division Bureau Manager Elizabeth J. Warren confirmed the timing of the release of Defendants' frozen $10,118 to Charles Jensen. Our May 12, 2008 "Circumvention" Memo also notes: "The Sheriff's Department also provided all other records which Defendants asked for with respect to this matter, including a date stamped copy of our November 21, 2007 Claim of Exemption. Since the Sheriff's Department has come down on the side of the Rule of Law in this matter, and the empirical facts are now documented in the record, the process of evaluation of the handling of this matter by the Sonoma County Superior Court can now be undertaken by the Higher Courts of this State (and if the Due Process Clause of the Fourteenth Amendment be found to be applicable, the United States Supreme Court)." (Id. at 28:7-14) After "all the dust has settled" insofar as action by the Sheriff's Office is concerned, Defendants now agree with the concluding sentence of Section P: "*Moreover, the Sheriff's Civil Bureau and all of its employees acted with the utmost professionalism and followed all the applicable rules and procedures governing their actions.*"

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ENDORSED
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FEB 02 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Appellants' Petition to Presiding Judge Owen Citing Respondent's Appeal Opposition

Charles Jensen's Opposition to Defendant's November 21, 2007 Appeal concedes: *Appellant's 27 appears to be accurate as to how they discovered the Sheriff's collection.* Our November 19, 2008 Petition for Mandamus notes:

> Charles Jensen would have had a very steep hill to climb, were he to try to deny what he admits in #27, after having been sent (on May 12, 2008) this information, in Defendants' Memo to Sheriff Cogbill re Circumvention of Their 11-21-07 Claim of Exemption (at 27:11 to 28:6): "When Defendants contacted the Sheriff's Department (immediately after a remark by Charles Jensen at the January 24, 2008 hearing suggested that he might already have Defendants' $10,118), it was absolutely impossible to come away with anything in

writing (in spite of a protracted conversation with staff members who apparently spent HOURS talking with their superiors and Sonoma County Superior Court personnel). What-ever higher official made the decision was not disclosed by the Deputies at the window, but the position was firm: 'We don't give out information to people in your circumstances, you have to check the court file.' It was with the greatest difficulty that we were able to confirm WHEN the Sheriff's Department acted in response to direction by Judge Elaine Rushing (which Defendants needed to know in order to determine WHERE in the chronological Case File and Docket to check.) The acknowledged fact that the process of issuing a check to Charles Jensen (drawn on our funds) did not begin until November 27, 2007 indicated that whatever the court sent to the Sheriff to facilitate turning over our $10,188 to Charles Jensen was almost certainly not sent until at least five days after our November 21, 2007 Notice of Appeal (and the immediate renewal of Defendants' Claim of Exemption based on having thus eliminated the ground for its denial on November 20, 2007.) The bottleneck was broken open on May 7, 2008 when the Sheriff's Civil Bureau Manager Elizabeth J. Warren agreed to release a copy of what Judge Rushing sent to effectuate turning over Defendants' frozen $10,118 to Charles Jensen. It turned out to be a copy of the Courtroom Minutes of 11/20/2007 **SIGNED AND CERTIFIED ON NOVEMBER 26, 2007.** (Id. at 27:11 to 28:11)

Charles Jensen's Opposition to Defendant's November 21, 2007 Appeal proclaims:

#28 alleges a cover-up that never existed. No response is offered as none is warranted. Appellants' November 19, 2008 Petition for Mandamus to require a rehearing notes:

> Charles Jensen certainly does not agree with the position of the California Commission on Judicial Performance that "Judge Rushing's conduct violated canons, 1, 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." However, he is in no position to sweep aside such a finding with the sort of *ad hominem* attacks, which he uses to try to discredit Appellants' charges (documented at a level sufficient to justify the reopening of Judge Rushing's case by the Commission on Judicial Performance).
>
> The CJP summarized its findings: "None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal. 3d 826, 865, that honesty is a 'mini-mum qualification' expected of every judge." (CR-1867: 19-21, CI 3170) The CJP report pointed out that "Judge Rushing's conduct violated canons, 1, 2A (failing to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary)." (CR-1866:15-16, CI 3169) (Id. 2:2-21) In **Section V** Respondent argues: "*Appellant's 29 is*

insulting and no response will be tendered." Respondent is offended by the possibility that Judge Rushing might have been telling the truth, and actually believed in favoritism when (according to a 2006 Report by the Commission of Judicial Performance) she made this admission: "Judge Rushing then told Officer Holeman that in her courtroom she goes against the court policies for CHP and other officers, and that he should extend that courtesy to her. She persisted in telling Officer Holeman that she was a superior court judge and that her husband was an appellate court justice." (CR-1866:12-14, CI 3169) (Id. at 28:19 to 29:17)

Dated: this 1st day of February, 2009

Michael Halliwell Defendant pro se	James Parker Defendant pro se

D. Order of Examination (OEX) Proceedings

1 Charles Jensen's 5/23/08 launch of OEX process **44**

2. Judge Richey's 6/30/08 first OEX hearing **45**

3. Judge Boyd's 7/14/08 second OEX hearing. **47**

4. James Parker's 7/18/08 affidavit re second OEX **49**

5. Mike Halliwell 7/18/08 affidavit re second OEX. **51**

6. Defendants' 7/21/08 immediate caselaw update. **54**

7. Defendants analyze 7/21/08 third OEX hearing. **58**

8. Judge Boyd's 7/23/08 OEX Suspension Order . . **62**

9. Defendants designate 7/28/08 OEX Transcript . **65**

10. Judge Chouteau's 8/29/08 transcript exclusion **67**

11. Defendants' 12/12/08 OEX hearing delay plea. **69**

12. Judge Boyd's 12/15/08 fourth OEX hearing . . . **75**

13. Judge Boyd's 12/19/08 fifth OEX hearing. **77**

14. Judge Boyd's 12/22/08 OEX Contempt Order. . **79**

15. Judge Boyd's 1/6/09 sixth OEX hearing **87**

16. Judge Boyd's 1/20/09 OEX Hearing Minutes . . **88**

17. Judge Boyd's 3/17/09 eighth OEX hearing **90**

18. Judge Boyd's 3/17/09 OEX Contempt Order. . . **93**

19 Defendant's 3/20/09 plea to drop jail sentence **102**

20. Judge Boyd's 4/17/09 OEX Cancellation. **118**

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ENDORSED
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MAY 23 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,

vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

ORDER TO APPEAR

FOR EXAMINATION

1. TO (name): JAMES PARKER

2. YOU ARE ORDERED TO APPEAR personally before this court to **a.** furnish information to aid in enforcement of a money judgment against you.

3. DATE: JUN 30 2008 TIME: 8:15 a.m, Dept 21 at: 3035 Cleveland Ave #200 SANTA ROSA, CA 95406

Before Judge: ROBERT S. BOYD

4. Judgment creditor applies for an order requiring (name): JAMES PARKER to appear, as stated in 2 a

5. The person to be examined: the judgment debtor

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

DATE: May 23, 2008 Print Name: Charles T Jensen

Signature: _____

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY June 30, 2008
Hon. ANDRIA RICHEY, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter: None

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JUN 30 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present. Defendant, Michael J Halliwell, is also present. Oath is administered to JAMES PARKER. Examination is held in the presence of the Court. Court notes Defendant's objection that a Reporter is not present. Court overruled Defendant's jurisdictional objection [in June 23, 2008 Exemption Claim at 12:9-16:] Defendants' Notice of Appeal re May 6, 2008 Award of Attorney's Fees (Filed May 27, 2008, and signed by James Parker and Michael Halliwell) precludes the fees-only judgment enforcement activity envisioned by a Hearing slated for June 30, 2008 before Judge Robert Boyd, pursuant to *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303:

"We are called upon to determine whether enforcement of award of attorney fees, together with other costs, is automatically stayed by taking an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to a contractual provision are an element of costs when, as here, respondent has not recovered money damages. We conclude that in such a case the fees are costs, and that filing a notice of appeal stays execution without

posting of an undertaking."

During the Examination, defendant refuses to answer question about his bank account, and defendant refuses to provide his driver's license. Court orders Defendant to comply with its order to provide requested information to Plaintiff. ORDERED CONTINUED TO 7/14/08 OEX HEARING FOR POSSIBLE CONTEMPT PROCEEDINGS.

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY July 14, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JUL 17 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 7/21/08 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present. Defendant, Michael J Halliwell, is also present in court.

Court examines Defendant James Parker, [who protested:] "You are ignoring what the Court directed me to do, what Judge Richey directed me to do. Do we have a copy of that? We have a copy of the minutes, and I will give it to you. He claims falsely something that is not true." (Transcript at 9:6-10) [Charles Jensen replied:] "While we are on the record, if I might – excuse me, Mr. Bailiff, Mr. Parker – that will be my third appearance on a rather simple OEX. I would at that time be asking this Court to consider the utmost of every possible sanction. I want it clear on the record that this is running the bill. It's not being done for free to the plaintiff, and I am just a little fed up. And I apologize for my anger." (Ibid at 9:22 to 10:2)

Defendant is advised of possible contempt sanctions. [James Parker argued:] "Judge Richey acted outside her authority, I believe, but she also indicated only

two specific items I was to expose, if you will. He claims she did otherwise, which is not true. I objected because there was no court reporter there on that day, on June 30th, but she decided to go ahead with her interrogation of me. But what Charles Jensen says is false. She did not order me to supply all of that information. I don't know what you are reading, but that is not the Court minutes and that is all we have to go on; and that's all I would refer to at this time." (Ibid at 7:22 to 8:5) [The Court answered:] "I am looking at Mr. Jensen's July 2nd letter to you, sir, in which there are three different items. It says additionally that the Court ordered you to provide written answers to the questionnaire, as well as provide the following, and that is those three topics." (Ibid at 8:6-11)

Court orders Defendant to turn-over requested documents: Written answers to the questionnaire, and the (3) categories of documents as itemized in Mr. Jensen's letter dated July 2, 2008: (1) Copies of any bank statements that have your name on it, be they savings, checking, or impound accounts; (2) Copies of investment/retirement accounts, stock accounts, IRA accounts (both Roth-IRA, and other IRA), and/or 401K accounts; and (3) To provide your current driver's license.

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SUBMITTED
JUL 18 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Affidavit re ISSUES RAISED in June 30, 2008 to July 14, 2008 OEX Proceedings

[Contempt threats without transcripts issues:]

There was no Reporter present at the June 30, 2008 OEX hearing (in spite of every advance indication that in *Paxinos v Halliwell & Parker*, this proceeding would not proceed in the informal way it usually does).

Along with the July 18, 2008 affidavit of co-Defendant Michael Halliwell, this affidavit is submitted in support of Defendants' request that a Reporter be present at the July 21, 2008 hearing.

My July 14th saying, without disrespect to the court, that I intended "to preserve my Fifth, Sixth and Fourteenth Amendment Rights" (Transcript at

4:11-12) is a reference to *In re Oliver* (1948) 333 U.S. 257, which affirms the applicability of the Bill of Rights (via the Due Process Clause of the Fourteenth Amendment) to contempt proceedings, especially a Defendant's right to know the nature of the charges against him in time to prepare an adequate defense.

Dated: this 18th day of July, 2008

_____

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Michael Halliwell, Defendant pro se
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SUBMITTED
JUL 18 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants Request Reporter for July 21, 2008 OEX Hearing and Filing of Transcripts and Affidavits

[Judge Boyd tried to force compliance with demands by the prior OEX Judge, the Honorable Andria K. Richey.]

Defendant James Parker answered EVERY question asked at the June 30, 2008 hearing by attorney for Plaintiff Paxinos, Charles Jensen, except for the two identified in the Minutes of this proceeding. These included questions about major asset categories such of ownership of a second automobile (NO), Life Insurance policy (NO), real estate holdings (NO), and outstanding judgments IN FAVOR of James Parker (NO). Charles Jensen already knows about Defendant's bank account (from

which he seized and appropriated $5,059 belonging to James Parker and $5,059 belonging to Michael Halliwell). Charles Jensen has personally served papers on James Parker at 271 E. Cotati Ave in Cotati, at a time when James Parker's car was parked right next to this residence, with the address clearly listed on the parking space. James Parker has also provided his Driver's License Number to Mr. Jensen's client, landlord Paxinos, and this information is also readily obtainable by Mr. Jensen from the Department of Motor Vehicles.

Charles Jensen's letter of July 2, 2008 (copy attached) is the basis for Judge Boyd's following in Judge Rushing's footsteps, when she said at the outset of her portion of the case, "I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up." (Transcript at 163:23-26)

The question which James Parker declined to answer about his bank account, was a request for the account number (which Charles Jensen already had). Here is how Charles Jensen provides the basis for what Judge Boyd would refer to as a question **topic**: "copies of any bank statements that have your

name on them, be they savings, checking or impound accounts." THIS IS ABSOLUTELY VERBATIM with Transcript at 3:22-24. Charles Jensen lays the groundwork for Judge Boyd's creating another **category** where there was NO UNANSWERED QUESTION: "copies of any investment retirement accounts, stock accounts, IRAs, (both Roth-IRA, and other IRA), and/or 401K accounts." THIS IS ABSOLUTELY VERBATIM with Transcript at 3:24-26. Judge Boyd did depart from Charles Jensen's letter in asking only for a **copy** of James Parker's driver's license, instead of the license itself. (Transcript at 3:27). Judge Richey made it clear on June 30th that, after James Parker had been advised of the applicable legal requirements and penalties for refusal, the judge would ask him the same questions on July 14, 2008 which he had refused to answer at the first Order of Examination (OEX). Charles Jensen's letter of July 2, 2008 invents out of whole cloth the notion that "the Court ordered you to provide written answers to the attached questionnaire."

Dated: this 18th day of July, 2008.

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SUBMITTED
JUL 21 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs.	**Unlawful Detainer** **Filed 6/1/07**
Michael Halliwell & James Parker Defendants/Appellants	Defendants' Immediate Follow-Up re Issues Raised during July 14, 2008 OEX Proceedings

Defendants conducted an unbiased "CCP Sec 917.1(d)" search, to demonstrate whether our interpretation of the scope of the automatic stay provision of CCP Sec 916(a), is indeed well supported by governing precedent. It is. The results of this search follow below.

A website (http//www.courtinfo.ca.gov/opinions/) LexisNexis search for <CCP Sec 917.1(d)> turns up (<+> positive treatment is indicated) *Gee v American Realty & Construction Inc.* (2002) 99 Cal.App.4th 1412, where (in the second paragraph) the Court of Appeal quotes its own May 21, 2002 opinion:

> "The judgment and order awarding defendants costs and contractual attorney fees would be

> automatically stayed on appeal without the necessity of an undertaking. (See Code Civ. Prcc., Sections 916 subd. (a), 917.1, subd. (d), 917.9, subd. (a)(3); *Bank of San Pedro v Superior Court* (1992) 3 Cal 4th 797, 800-801.)"

Gallardo v Specialty Restaurants Corp. (2000) 84 Cal. App.4th 463 notes that in situations where bondable and non-bondable costs are contained in the same order (as in its own case), a party may then ask a court of appeal to disentangle the situation, and apply the automatic stay provision to the appropriate part of the judgment.

> "Supersedeas is the appropriate remedy when it appears that a party is refusing to acknowledge the applicability of statutory provisions 'automatically' staying a judgment while an appeal is being pursued." *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301,303.)

[This Nielsen citation] squarely addressed the issue that presents itself in *Paxinos v Halliwell & Parker*:

> We are called upon to determine whether enforcement of the award of attorney fees, together with other costs, is automatically stayed by the taking of an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to contractual obligations are an element of costs when, as here, respondent has not recovered money damages. We conclude that in such a case the fees are costs, and that filing a notice of appeal stays execution without the posting of an

undertaking.

The *Gallardo* Court is firm in its reading of the plain language of CCP 916(a), that unless there is a **valid** exception, the appeal itself says all proceedings related to the judgment being appealed. Thus immediately after the *Nielsen v. Stumbos* citation, the *Gallardo* opinion continues:

> Section 916, subdivision (a) provides: "Except as provided in Sections 917.1 to 917.9 . . . the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order."

Charles Jensen cites NO exception to Sec 916(a) stay provisions, much less a valid one.

Defendants do not suggest that there are no cases where a motion for a stay without an undertaking during an appeal, might not be appropriate, only that there is no such case, which parallels the circumstances of *Paxinos v Halliwell & Parker*. HOW CAN IT BE THAT AN EXPERIENCED UNLAWFUL DETAINER LAWYER, WHO INSISTS ON "PLOWING AHEAD" WITHOUT ANY

SUPPORTING AUTHORITY, BE **PROPERLY** DEFERRED TO, IN THE FACE OF NUMEROUS SUPPORTING CASES CITED BY TWO LITIGANTS *IN PROPRIA PERSONA*, **WITHOUT ANY BRIEFING ON THE MATTER IN DISPUTE?**

Dated: this 21st day of July, 2008

James Parker
Defendant pro se

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SUBMITTED
JUL 25 2008
MCV 191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Appendix
Analyzing Transcript
of July 14, 2008 OEX
OEX Hearing

Defendants have received welcome news that the Transcript of July 21, 2008 OEX hearing will be available for pick up when Division 21 opens on July 22, 2008. [This Transcript quotes James Parker:]

> If the award is for costs and attorneys' fees only, there is an automatic stay pending appeal, and that is [why] this Court does not have jurisdiction, because there is an automatic stay in place. (Transcript at 7:13-16)
>
> In *Ziello versus Superior Court* (1999) 75 Cal. App.4th 651, the appellate court was asked to rule on whether an undertaking was required to stay execution of the judgment for costs pending appeal. It decided it was not.
>
> I am not required to file for a stay, since an automatic stay is in place because the judgment which at this point isn't enforceable anyway. It is

> only for costs and attorneys' fees. And that is what, that in itself is what gives me an automatic stay, Your Honor. (Ibid at 8:16-27)

Judge Boyd summed up key CCP stay provisions:

> If we look at CCP section 917.1, it says, "Unless an undertaking is given, perfecting the appeal shall not stay enforcement." Dropping down to 917.1(d): "However, no undertaking shall be required pursuant to the section solely for costs." Why would that not apply, requiring an automatic stay? (Ibid at 12:26 to 13:5)

Charles Jensen answered Judge Boyd's question:

> Because we are not seeking the costs, Your Honor; we are seeking the attorneys' fees. (Ibid at 13:7)
>
> The costs are no longer being sought in this OEX or in the motion for attorney's fees. Costs have not yet been paid, and that would be, Your Honor, the filing fee. (Ibid at 13:11-13)

Judge Rushing's $20,720 award explicitly includes the motion filing fee. Defendants point out in their Analysis of the July 21, 2008 Transcript:

> Actually, Charles Jensen was seeking both costs and attorney's fees in his motion granted by Judge Rushing on May 6, 2008. In most cases where Sec 917.1(d) is applicable, the non-fees costs (such as for filing the motion, as with the judgment Charles Jensen is trying to enforce) are only a small fraction of the attorney fees being sought. This was true of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, from which Charles

> Jensen is trying to create a false distinction. Charles Jensen probably brought a copy of the order Judge Rushing signed on May 6, 2008 to give him every cent he sought, with him to Court on July 21st. If he didn't, the Clerk could have easily located it for him on the Court's computer.
>
> Trying to win with this sort of bending the truth may be only a small violation of Bus. & Prof Code 6068(d), because of the small amount of non-fees costs involved in the *Paxinos v Halliwell & Parker* judgment at issue, but it illustrates the wisdom of Judge Richey's giving James Parker two weeks to think about it (and check out whether he might be on sound legal ground in refusing to answer) before the court again demanded that he disclose the number of his bank account and give up his driver's license number. (Id. at 19:7-15)

Judge Boyd asks: "You are saying attorneys' fees are not costs?" Charles Jensen replies: "That is correct." (Ibid at 13:19-21) Defendants point out in their Analysis of the July 21, 2008 Transcript:

> In *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303, the court squarely addressed the issue that presents itself in *Paxinos v Halliwell & Parker*: "We are called upon to determine whether enforcement of the award of attorney fees, together with other costs, is automatically stayed by taking an appeal. Resolution of that question hinges on whether attorney fees recovered pursuant to contractual obligations are an element of costs when, as here, respondent has

not recovered money damages. We conclude that in such a case the fees are costs, and that filing of a notice of appeal stays execution without the posting of an undertaking." (Id. at 7:16-20)

Dated: this 25th day of July, 2008

James Parker
Defendant pro se

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
JUL 23 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants
_____/

ORDER STAYING ORDER OF EXAMINATION PROCEEDINGS

At the hearing of this matter conducted on July 21, 2008, plaintiff appearing through attorney Charles Jensen, and judgment debtor James Parker appearing in pro per, the court requested parties to produce copies of the prior pleadings in which an appeal was filed concerning the imposition of attorney's fees in the amount of $20,680 against judgment debtor James Parker and in favor of plaintiff, and the court now having received the various documents provided by the parties and more importantly reviewed the court file in this matter, makes the following determination:

On May 25, 2008, defendants filed a notice of appeal of the May 6, 2008, award of attorney's fees, the award by Judge Rushing of $20,680 in attorney's fees and $40 in filing fees, awarded against judgment debtor James Parker. The court further understands that as to this particular appeal, the appellate division is awaiting preparation of the various transcripts so that this appeal can be filed. The court is aware that there is already an appeal on a separate matter set in this action for September 25, 2008. However that is a separate issue from the appeal filed of the awarding of the $20,680 in attorney's fees and $40 in filing fees. The hearing on the appeal on this particular award of attorney's fees has not yet been scheduled and cannot be until the transcript is prepared. The court understands that court staff had hoped to consolidate this appeal with the one already scheduled for September 25, 2008, but does not feel it can do so given the time constraints of having the transcripts prepared and then a briefing schedule imposed.

The particular order of examination which forms the basis of this decision is an attempt by Mr. Jensen to collect the $20,680 in attorney's fees he was

awarded on May 6, 2008. As it does appear that the judgment debtor has filed an appeal of that award, pursuant to the authority of Code of Civil Procedure 916, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed upon. Pursuant to Code of Civil Procedure section 917.1(d) no undertaking is required when seeking a stay of an enforcement for costs.

Therefore, the court will stay further proceedings on the order of examination for purposes of recovering the attorney's fees awarded to plaintiff of $20,680 until after the appeal is heard.

DATED: July 23, 2008

ROBERT S. BOYD
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

ENDORSED
FILED
JUL 28 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Ex Parte Application Seeking Permission to Designate OEX Hearing Transcript Analysis re Their Appeal Noticed on May 27, 2008

Even If the ORDER STAYING ORDER OF EXAMINATION PROCEEDINGS issued by this Court on July 23, 2008 is appealed by the Judgment Creditor, Counsel for Plaintiff Paxinos has indicated support (Hearing Transcript of July 14, 2008 at 9:22 to 10:2) for expedited consideration. Judgment Debtors fully support expedited consideration and feel that there is no reason to "reinvent the wheel" with respect to the substantial effort already put into consideration of the proper scope of CCP Secs 916(a) and 917.1(d). Besides the jurisdictional question itself, there is an implementation problem which might require an appeal by Defendants,

arising out of the fact that on October 2, 2007 the Writ of Execution for the $10,000 fees judgment was never served on Defendants (nor were the Courtroom Minutes noting this Writ, nor was this part of the Case File accessible to Defendants during the crucial time frame). This Writ of Execution was clearly related to Defendants' Notice of Appeal of September 26, 2007, and so the Court had no power to issue anything to facilitate enforcement of the underlying attorney's fees judgment (nor to ignore Defendants' Appeal: see *Ehret Ichioka* (1967) 247 Cal.App.2d 637, 640-641). Defendants see no reason why OEX Transcripts could possibly prejudice anyone's interests.

Dated: this 28th day of July, 2008

Michael Halliwell Defendant pro se	James Parker Defendant pro se

James Parker, Defendant pro se
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 jayfrank@myway.com # MCV 191306

FILED
AUG 29 2008

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Proposed Order to Designate OEX Hearing Transcript for Consideration re 5/27/08 Appeal

This Order hereby authorizes Appellate Clerks in the Hall of Justice to accept and convey to Presiding Judge of the Appellate Branch Rene Auguste Chouteau, a copy of the accompanying "Defendants' Added Designation re Appeal Noticed on May 27, 2008 (OEX Hearing Transcripts and Analysis") and "Defendants' Appendix Analyzing Transcript of July 21, 2008 Hearing." The purpose of this Order is to bring to Judge Chouteau's attention the existence of an ALREADY TRANSCRIBED Reporter's Transcript of closely related OEX Proceedings. Defendants argued:

> Since a transcript for the May 6, 2008 Hearing where the $20,000-plus attorneys' fees award was

granted is not yet available, designating the accompanying July 21, 2008 OEX Hearing Transcript and Analysis cannot possibly produce any delay. If Plaintiff appeals Judge Boyd's stay order, the July 21st proceedings will be an essential part of such an appeal. If the stay remains in place, these proceedings will be an essential part of Defendants' case on the underling judgment. No one wants an extra OEX Appeal hearing. (Chronological Index #04787)

Copy to Charles Jensen via Box 170.

Dated: this 28th day of July, 2008

Michael Halliwell Defendant pro se	James Parker Defendant pro se

Motion Denied

Dated: AUG 28 2008

Presiding Judge Choteau
Superior Court Appellate Branch

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

'08 DEC 12
8:01 am
Sonoma County
Superior Court

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	No. MCV-191306 **Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum Citing Grounds for Vacating Proposed OEX Hearing of December 15, 2008

Charles Jensen has conceded that no undertaking (appeal bond) is appropriate in the current circumstances (see accompanying brief at 2:21-25) and CCP Sec 916 plainly requires that in these circumstances "the perfecting of an appeal stays proceedings in the trial court upon judgment or order appealed from or upon matters embraced therein or affected thereby, **including enforcement of the judgment or order.**" There is no doubt that the scheduling of an OEX hearing (which took place on November 14, 2008) was a court action, as Charles Jensen has also conceded.

Our November 19, 2008 Mandamus Petition (at 78:3-7) quotes recent appeal briefing:

In **Section I** Respondent commits a further distortion of the procedural history of the case: "*Appellants' 11 again grants Mr. Jensen powers he does not possess. Mr. Jensen doesn't set hearings, the Court does.*" In fact, the needs of attorneys are taken into account when hearings are set, and Judge Rushing gave priority to this practice over the needs of Defendants.

One of the most important reasons that CCP Sec 916 stay provisions include not only the order itself, but also matters "affected thereby" during appeal proceedings, is that this allows litigants to concentrate on making an effective case before the higher court.

At one stage in prior OEX proceedings, the Court asked James Parker how he would respond if the court denied his challenge to its jurisdiction, and he cited the governing precedent which would be his next line of defense (relating to Due Process considerations). In our analysis of this subject (at page 4) in the accompanying brief, *Cooper v Superior Court* (1961) 55 Cal 2d 291, 292, is cited dealing with circumstances where the order "was not a 'lawful' order of the court (within the meaning of [the applicable section of California's Code of Civil Procedure] and hence it was not contempt for him to disobey it."

Our November 21, 2008 Mandamus Update (at 8:1 to 9:26) quotes James Parker:

> In *Clark v Millsap* (1926) 197 Cal 765, 785, our Supreme Court affirms: "**Fraud or unfairness on the part of the attorney will prevent him from recovering for services rendered.**"
>
> In his response to my (James Parker's) Opening Brief's Conclusion, Charles Jensen's Reply Brief proclaims: "Counsel for respondent has never been caught lying." The specific lie I (James Parker) referred to in that brief was Charles Jensen's claim in Judge Rushing's proceedings that I had tried to conceal the presence of Michael Halliwell at 1041 Copeland Creek Drive. In fact, I first called Michael Halliwell's residency to Charles Jensen's attention in a three-way telephone conversation on April 12, 2007, well before the trial started. But Charles Jensen pretends that this conversation never took place. Charles Jensen hung up on Defendants during this April 12th conversation and immediately severed all further communications with Defendants. This was part of his strategy to prevent us from calling other inconvenient facts to his attention.

Michael Halliwell's November 5, 2008 Reply Brief (at 11:23 to 12:17) observes:

> At the July 21, 2008 hearing, Charles Jensen also sought to bolster the validity of his $20,720 fees award by referring to an ex parte application to stay enforcement of this award, which had allegedly been denied by Judge Allan D.

Hardcastle. Defendants' July 25th Analysis quotes Charles Jensen's explanation: "The proposed order that I did receive, an endorsed filed copy, has handwritten across it – hand-written – 'Denied,' dated and signed by Judge Hardcastle. That is as much as I can tell the Court." (Transcript at 21:24-27) Charles Jensen then claimed to recall two rulings on this subject. Defendants' Analysis quotes his July 21, 2008 statement: "The ex parte judge, which I believe was Judge Nadler, but I could be mistaken – and the quote 'Petition' was heard by Judge Hard-castle. It has been the same argument." (Tran-script at 22:9-12) Defendants' Analysis continues (at 39:23 to 40:7)

> The only argument, written or oral heard by Judge Rushing that the stay provision of 916(a) was allegedly not activated was **because no appeal had been perfected.** The ex parte action by Judge Nadler (or any other judge) and the Petition rejection by Judge Hardcastle are inventions by Charles Jensen. As he noted earlier in his testimony, "I get a copy of everything," so it should have been an easy matter for him to produce the necessary documentation of an alleged ex parte and Petition argument presented by Defendants, which he says is so redundant.

Charles Jensen ventures further into Fantasy-land: "It was raised in passing in the moving papers; the three-judge panel as to Appeals 1 through 4; it was addressed in Judge Chouteau's written opinion that it didn't apply; and that, you know, the first collection of monies for the

> plaintiff were proper." (Transcript at 22:13-17) Charles Jensen admits in appeals briefing for Appeals No. 5 and No. 6, that Defendants did not find out that their money had been given to Charles Jensen by the Sheriff until AFTER the January 24, 2008 Appellate Branch hearing, so how could Defendants have said anything about how this was accomplished in moving papers for Appeals 1 through 4, filed at least a month before the hearing?

Michael Halliwell's November 5, 2008 Reply Brief (at 13:6-15) observes:

> Defendants' July 25th Analysis of this episode continues (at 44:18-24): "After Clerk Stephen Berry had tried to locate the documents which Charles Jensen was referring to, Charles Jensen tried to help: 'I would have to say, Mr. Berry, that I believe the petition was May or June. I believe it was fairly recent. The denial was – I know the denial was by Judge Hardcastle, and if it is listed that way, you may be able to find the petition and whatever the headnote claim is. It was a petition for stay, as I recall it.' (Transcript at 26:18-24) Judge Boyd responds: 'Judge Hardcastle has been in Juvenile Court for some time, so if he signed it, he went to Juvenile Court I believe about October '07.' (Transcript at 26:25-27) Charles Jensen confirms: 'I believe it was Judge Hardcastle.' (Transcript at 26:28)"

Charles Jensen must be required to establish that he is an attorney in good standing, before he is to be allowed to further represent his client. An

essential part of this good standing is compliance with Business & Professions Code Sec 6068(d) [A member of the Bar "shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth."]. An attorney cannot be allowed to win by cheating and then to continue as if nothing has happened. If no satisfactory basis for his prior assertions (relating to documents which do not exist) is forthcoming, Charles Jensen should be sanctioned and should forfeit his right to any compensation for activities "tainted with fraud."

Dated: this 12th day of December, 2008

Michael Halliwell
Defendant pro se

James Parker
Defendant pro se

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY December 15, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **ENDORSED FILED**
Plaintiff vs DEC 16 2008

JAMES PARKER, et al, re OEX PROCEEDINGS
Defendant Action # MCV-191306

SPECIAL SET CALENDAR 12/19/08 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Court hears the arguments of the parties. [Judge Boyd asks:] "Mr. Parker, just to review the matter again, my understanding is that your are contesting the ability of this Court to, you are asking to have the OEX continued, and the basis of that is you have filed a writ with the California Supreme Court and you have not heard a response from the California Supreme Court. And I understand the basis of that writ is a request that the matter should not proceed while they have yet to issue their writ, is that correct, sir? [James Parker replies:] "Yes. We are also depending upon your order of what – was the date? July 23 – stating that was the case, the OEX wouldn't go forward until the appeals were finished." (Transcript at 2:14-26) [Judge Boyd responds:] "Well, the Court – I recall the order you referenced, and it is my recollection that I ordered this OEX was to be stayed while your appeal with the Appellate Division of the Sonoma County Superior Court was pending. That hearing was held; an order was issued on November 24th, 2008, and filed on December 5th. So that is what the Court was saying by that

order." (Ibid at 3:10-17) [James Parker objects:] "Your Honor, respectfully, your order of – what was that date? July 23rd – did not say 'the local appeals court.' It said, 'until the appeal was heard.' You did not stipulate in your order that it was what appeals court it was." [Judge Boyd responds:] "All right. Are you prepared to answer the questions, sir? I am ordering you to come forward, be sworn and answer the questions of Mr. Jensen." [James Parker responds:] "Well, Your Honor, all I can say is we do not believe that the Court has jurisdiction, based on your own order." (Ibid at 4:3-14)

Court ORDERS the examination to proceed: "Well, I am giving you – to be absolutely clear – a warning that if you do not answer these questions today, you are exposing yourself to a $1,000 fine and/or five days in jail, including the possibility of both. I want you to be clear that that is what you are exposing yourself to." (Ibid at 4:22-28)

Defendant declines to be examined, answering: "Yes, Your Honor. I don't want to go to jail; I don't want to pay a $1,000 fine. But I have no choice but to decline to protect legal rights of due process." (Ibid at 5:1-4)

[Judge Boyd ruled:] "Well, the Court then finds this to be a direct contempt in the view of the Court, a civil contempt pursuant to CCP Sec 1209(a)(5), disobedience of a lawful court order." (Ibid at 5:5-8)

AN ORDER TO SHOW CAUSE is issued as to Defendant, JAMES PARKER, to show cause why Sanctions should not be imposed for his failure to comply with a lawful Court order.

ROBERT S. BOYD _____
Judicial Office

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY December 19, 2008
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs DEC 22 2008

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 1/6/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Defendant declines to be examined, saying: "Mr. Jensen is not telling you that we filed the motion for reconsideration. That has not yet been denied, and the reason is has not been denied we don't know. [Brief interruption] If I may finish. And even though he says it was denied from the bench, and I do agree that it was denied from the bench, but even if it was denied from the bench, the local appellate court that denied it from the bench still has jurisdiction until tomorrow. And that is back to CRC 8.708. So this hearing is premature. Mr. Jensen knows that this hearing is premature. Mr. Jensen set this hearing even before that November 20, 2008 appeal hearing was heard." (Transcript at 11:21 to 12:6) [Judge Boyd observes:] "You have confirmed that the bench ruled, that the appellate division ruled from the bench denying your petition." (Ibid at 12:23-25) [James Parker replies:] "We did file a motion for a re-hearing on that. The Court has not acted on that as of yet." (Ibid at 13:12-13) [James Parker explains

the extension of jurisdiction resulting from an unanswered motion for rehearing:] "CRC 8.708 states the appeal court maintains jurisdiction for 30 days after they make a ruling. Whether it be from the bench or if they back it up with a written ruling that comes along later, they can decide that [their pronouncement of decision was the written ruling, so] it [their response deadline] is 30 days from that." (Ibid at 13:27 to 14:3) [James Parker adds:] "We are in the middle of trying to prepare an appeal to the First District Court [of Appeal], and if need be, file an appeal to the Supreme Court on the [decision announced at] the hearing that took place on November 20, 2008." (Ibid at 14:14-17)

[Judge Boyd says to Defendant James Parker;] "I want to give you another opportunity to consider whether you are going to answer the questions." (Ibid at 21:13-14) [James Parker responds:] "If you are going to try to force me into revealing my resources at this point, I am going to respectfully decline to do that. If you want to put me in jail you can do that. If you want to fine me, you can do that." (Ibid at 25:3-6) Court finds contemptor's action is contempt of court, and he is adjudged guilty of contempt of court in violation of Code of Civil Procedure section 1209(a)(5). James Parker, the contemptor, is sentenced to spend three days in the County Jail. Execution of this sentence is stayed to January 6, 2009, at 8:30 a.m., Courtroom 21.

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
DEC 22 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER AND JUDGMENT OF CONTEMPT

JAMES PARKER, et al.,
Defendants

_____/

On December 19, 2008 the court held a hearing on an Order To Show Cause In Re Contempt which had been noticed and announced in open court to Defendant and Judgment Debtor James Parker on December 15, 2008, ordering him to appear on December 19, 2008, to show cause why he should not be adjudged guilty of contempt and punished accordingly for the willful disobedience of an order to answer questions presented by counsel for Judgment Creditor at a properly noticed and scheduled order of Examination. [*At the December 19, 2008 hearing James Parker said*:]

Now, the first hearing we had before the local appeals court, the Sonoma County Appeals Court, was held on January 24, 2008. And this is a response to an order on motion for reconsideration and petition to resolve inconsistencies that we filed with the Court based on that hearing. And I will point out to you, it says: 'Appellant's motion for reconsideration and appellant's petition to resolve inconsistencies are deemed to be a motion for rehearing, which was denied by operation of law on April 5th, 2008 pursuant to CRC 8.708.' (Transcript at 4:2-12) [*Parker continued*:] This hearing today is being held prior to the expiration of the 30-day notice on a hearing that took place on November 20th. So, I think that reinforces our petition. (Ibid at 4:24-26) [*The Court asked how this applied to the current situation, and Mr. Parker answered*:] Because they are referring to April 5th, 2008, which was 30 days after the [decision]. The order was March 6th, and that [April 5th] is 30 days after the order of March 6th that they issued in writing. (Ibid at 5:6-10) [*Parker explained*:] This is just an example. I am not saying what is going on today is based on the January 24 hearing or the March 6 hearing. I was just demonstrating it as an example of the fact that the local appeals court maintains jurisdiction for 30 days after they issue a ruling. And it is dependent upon whether it is a written ruling or a ruling from the bench. [*The Court asked*:] If I accept what you say, what difference does it make to what we are doing? [*Mr. Parker answered*:] Here? Okay. The hearing for the $20,000 judgment that was awarded to Mr. Jensen was held on November 20 – that 30 days –

> of this year, 2008. And that 30 days has not expired yet. Minimally, it would be tomorrow that it expires, minimally. (Ibid at 7:3-18) [*James Parker continues*:] But they can even move later if they choose, because we have filed a motion for re-hearing with them. We also filed another motion for rehearing which we filed yesterday, and Charles Jensen has a copy of it, so they could extend their jurisdiction from this appeal for re-hearing if they so chose. But minimally, it doesn't expire until tomorrow, so this hearing is premature. Therefore, this Court does not have jurisdiction. (Ibid at 8:9-17)

At the hearing on December 19, 2008, Mr. Parker, after arguing why this court did not have jurisdiction to proceed with the hearing, arguing that this hearing was premature, arguing that he had a right to be represented by a non-attorney who was present in the courtroom, and arguing that this court had ordered a stay which was still in effect to preclude the court from having the Order of Examination continue, was ordered to be sworn as a witness and answer the questions presented by Charles T. Jensen, counsel for Judgment Creditor.

> [*Charles Jensen cited the judgment involved*:]
>
> $20,000 was the original order that was issued, Your Honor, on May the 6th. [*The Court asks*] As we sit here today, there is no stay on the enforcement of that order that has been ordered by any

> court? [*Charles Jensen answers*:] That's correct. There has been no noticed motion, no noticed hearing for petition. They are simply papers that are filed – sometimes a motion, sometimes a petition – with no hearing set, no filing fee and no setting by the clerk and no stay order. [*The Court asks*:] So there is no barrier to the enforcement of that judgment today? [*Charles Jensen answers*:] That is correct. [*James Parker interjects*:] We disagree with that. [The Court responds:] I heard your argument, sir, and I disagree with your argument. Now I want to move ahead, so what I am going to do is ask you, because it is the Court's belief that you are required to answer those questions that Mr. Jensen has, so, sir, I have asked you to come around to the witness chair, be sworn in and answer those questions. (Ibid at 4:24 to 15:16)

Mr. Jensen had previously, at the request of the court, recited the very questions he wished Mr. Parker to answer, and the court believes they were appropriate questions to be asked and answered at the examination of a debtor. Mr. Parker was warned at least twice during the hearing on December 19, 2008, that if he refused to answer the questions, he was exposing himself to a fine of up to $1,000, five days in custody, or both. Mr. Parker refused to be sworn and re-fused to answer the questions. A transcript of the December 19, 2008 proceeding is

attached hereto as Exhibit A. [*The transcript quotes this discussion of the stay issue*:]

> This is a document filed July 23, 2008? [*James Parker confirms*:] Yes. [*The Court continues*:] I see now what you are referring to. That it was to be stayed until after the appeal was heard, and that was an appeal with our appellate division, which has been heard. [*James Parker responds*:] We would disagree. That order doesn't say that. It says "until the appeal is heard," and any reasonable person who is a non-attorney can assume, since we have often heard the term, "I am going to appeal up to the Supreme Court," and that would include an appeal up to the Supreme Court. We could have reasonably construed from that sentence that's what you meant, because you did not say, "until the appeal was heard before Sonoma County." You referenced it, but that hearing that you are referencing hadn't even been set when you wrote that order there, so we could not assume in any way you were referencing an appeal whose date hadn't even been set yet, so it is reasonable for us – we defendants here – to assume you meant the entire appeals process, up to and through the Supreme Court. And yes, that would be the answer to your question; that is how we interpreted that document. (Ibid at 18:27 to 19:23) [*The Court says of its July 23, 2008 stay order*:] this order this was to be stayed until the appeal was over, and that appeal is over. So, that would only apply to the appeal discussed in the order. So, it takes us back – The bottom line is, there is no stay on this hearing. [*James Parker reasserts*:] Your Honor,

> respectfully, I would object to your rationalization of your own order. That may be your rationalization, but that last sentence of that document doesn't say "until **that** appeal is heard" it says, "until **the** appeal is heard." And it is reasonable for people who are not attorneys to extrapolate from that you mean the entire appeals process. (Ibid at 20:6-21) [*The Court replied:*] If for some reason you misunderstood it, I am telling you the Court intended that to refer to that appeal. Therefore, this order would not be a stay to proceeding today. I want to give you an-other opportunity to consider whether you are going to answer the questions. (Ibid at 21:9-14)

Mr. Parker, the contemptor, was notified specifically that the court found him in contempt and was in fact found guilty of contempt. The court heard and considered the contemptor's explanation and reason for his refusal to answer the questions and rejected the arguments because it had previously been ordered in this matter that Michael Halliwell was not allowed to represent Mr. Parker at the hearing. The stay previously issued by this court was specifically limited in its language to a hearing to be held in the Appellate Division of the Sonoma County Superior Court. That hearing has been held and the contemptor's appeal of the order of attorneys' fees was denied. The court heard and consid-

ered the other arguments presented by Mr. Parker challenging this court's ability to proceed with this hearing and rejected said arguments. There is no stay of enforcement of the award in effect and the hearing is not premature.

[*The Court moved forward with the OEX process*:]

At this time, then, I am going to order you to go to the witness stand and be sworn in as a witness. [*James Parker responded*:] Your Honor, I respectfully decline to be sworn in. I will be happy to go sit up there and we can have a discussion, but I am not going to give up my constitutional rights because you say so. I have a right to do research on your reasoning and reply to why your reasoning might be incorrect. [*The Court replied*:] And you realize, sir, that your refusal to answer these questions exposes you to a monetary fine, time in jail or both? [*James Parker answered*:] Well, I do not believe this Court has any jurisdiction, frankly, to issue any order at this time because of the reasons why I explained. I hear what you are saying, but I do not believe you have the authority at this time to do that. (Ibid at 26:9-26) [*The Court explained its ruling*:] The Court has ordered you to answer the questions, Mr. Jensen has. You have refused to do so. You have told the Court you will not do that, so the Court finds you in contempt. You were warned about what would happen if you refused to answer the questions. Your refusal to answer those questions, which the Court judges to be contempt of court, happened in the

> immediate view and presence of the Court. You have been given an opportunity to explain why you are refusing to do it; any defense you have or mitigating circumstances. Therefore, having heard those arguments, the Court disagrees, and therefore the Court finds you guilty of contempt. The Court will at this time impose three days county jail. (Ibid at 27:5-18)

After due consideration, the Court found that, beyond a reasonable doubt, that the contemptor's action was in contempt of court and he was adjudged guilty of contempt of court in violation of Code of Civil Procedure § 1209(a)(5). James Parker, the contemptor, is sentenced to spend three days in the County Jail. Execution of this sentence is stayed to January 6, 2009, at 8:30 a.m. in Courtroom 21 of this court. James Parker, the contemptor, is ordered to return at that date and time. If James Parker, the contemptor, is willing to answer the questions of counsel for Judgment Creditor at that time, the court will vacate the three-day in custody sentence.

IT IS SO ORDERED.

DATED: December 22, 2008

ROBERT S. BOYD
Judge of the Superior Court

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY January 6, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JAN 8 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 1/20/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Parties address the Court. [James Parker explains California Supreme Court filing rules, which allow Defendants to file within 10 days of the First Circuit Court of Appeal January 2, 2009 denial of their Petition for a Writ of Mandate, 20 days after that for opposing parties to answer, and 10 days for the Petitioner to reply to any new points raised by the opposing parties.]

Court believes the current appeal is still pending, and there should be a stay of this proceeding. Court STAYS the imposition of (3) THREE DAYS County Jail sentence, in light of the pending Writ before the California Supreme Court. CONTINUED FROM 1/6/09 TO 1/20/09.

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY January 20, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs JAN 21 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 3/17/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Parties address the Court. [James Parker says:] "This is the sixth time we hav. been here... it just seems to us that this is the most efficient way to do this, so this Court can decide if Mr. Jensen's argument is meritorious [about] jurisdiction." [Judge Boyd replies:] "All the creditor has to do is file a notice requesting a hearing date, and there is no procedural requirement that the creditor explain why that date is appropriate." (Transcript at 6:18 to 7:3) [Charles Jensen replies:] "I feel that a continuance without noticed motions and all the other folderal he requested is inherently within the Court to set, reserving all prior order for contempt, etc." (Ibid 8:9-12)

Defendant files motion to vacate hearing without prejudice re rescheduling after Supreme Court relinquishes jurisdiction Court vacates the finding of Contempt: "**So now that I am beginning to get a clearer picture of the whole story, not just this**

Court's role, which was enforcement of the judgment, I believe that the Court was premature in the finding of contempt. At this time I am going to vacate the finding of contempt, as that matter of enforcement of the $20,000 is on appeal." (Transcript at 18:2-8)

CALIFORNIA SUPERIOR COURT, Date:
SONOMA COUNTY March 17, 2009
Hon. ROBERT S. BOYD, Judge Courtroom: 21
Deputy Clerk Stephen Berry Reporter Eva Popovich

CHRYSANTHE PAXINOS, **SERVED**

Plaintiff vs MAR 17 2009

JAMES PARKER, et al, re OEX PROCEEDINGS

Defendant Action # MCV-191306

SPECIAL SET CALENDAR 4/21/09 OEX Hearing

Counsel Charles T. Jensen is present on behalf of Plaintiff; Defendant James Parker, self represented party, is present.

Defendant submits written statement, and states this proceeding is premature. [James Parker argues:] "The first-and-most-clear-cut reason why enforcement of the $20,720 fees judgment is still premature and the defendants have a right to appeal to the U.S. Supreme Court, and we intend to exercise that right. At the bottom of the first page of our March 12, 2009 letter to [California] Chief Justice George is U.S. Supreme Court Rule, which provides 90 days after the denial of discretionary review for defendant to file a petition for certiorari in the U.S. Supreme Court. The March 9, 2009 letter from Senior Deputy Clerk of the California Supreme Court list potential starting dates for this 90-day period. The earliest due date for our petition for certiorari is 90 days after January 21st, 2009. If we file a petition consolidating our two adverse fees judgments, the deadlines for submission would be April 20th, 2009. If we file a separate petition for the $20,720 fees judgment, it would be due 28 days later,

90 days after February 18th, 2009 or May 18th, 2009. OEX proceedings sooner than these filing deadlines would interfere with preparations of our petitions for certiorari. The earliest that the $20,720 judgment would be enforceable would not be until several months after these deadlines, if the U.S. Supreme Court declined to review our case. Therefore, Your Honor, we feel that these – this hearing is still premature." (Transcript at 3:19 to 4:18) [Judge Boyd asked for Charles Jensen's response; he said:] "Removal to federal court requires that it be done in the beginning so that you preserve your right. The beginning of this case is now roughly a year and a half old. There are grounds if a removal or – of course not in front of the Court, so I won't get involved in the claims of federal rights." (Ibid 4:21-27)

Defendant refuses the Oath to be examined by counsel. [James Parker explains:] "The law requires we expend our State court rights of appeal before we go to the U.S. Supreme Court, Your Honor. This is what we are in the process of doing. Therefore, we do have the right to appeal to the U.S. Supreme Court as the right – as our right of due process to protect ourselves. So, therefore, if you insist that this is not the case, we do not feel that having me testify would be a lawful order and, therefore, I would decline at this time." (Ibid at 7:10-19)

Court advises Defendant his refusal to be examined would be found to be contempt of a Court Order. [Judge Boyd asks:] "Are you willing to provide the requested bank statements, et cetera, requested by Mr. Jensen? " (Ibid at 11:5-7) [James Parker replies:] "I am not at this time, Your Honor, because, respectfully, I feels that's an unlawful order.

Because we're in the middle of our appeal process, which is our due right to spend all appeals." (Ibid at 11:8-12) [Judge Boyd restated to Defendant:] "The Court has ordered, just for clarity, sir, simply to make it abundantly clear, I am ordering you to answer the written questions, provide the requested bank statements, provide the requested investment account information, and provide a copy of your driver's license. Are you willing to do that?" (Ibid at 12:13-19) [James Parker responded:] "Sir, I would ask that if I again wish not to do that, that you give us a stay to file an immediate appeal. If not that, at least a day's stay for me to enter jail, if that's what you're going to require me to do." (Ibid at 12:21-25) [Judge Boyd continued:] "Now having heard this Court order you to provide that information, are you willing to do so?" (Ibid at 12:26-28) [James Parker answered:] "I am not, sir." (Ibid at 13:1)

Defendant, having failed to be examined, is found in Contempt of Court in violation of Code of Civil Procedure section 1290(a)(5). Court sentences Defendant James Parker to serve three (3) DAYS in the Sonoma County Jail. Defendant is ordered to turn himself in to the Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. Defendant to be held in custody without bail for three DAYS. If Defendant complies with document request and examination by 3:00 p.m. Friday, March 20, 2009, Court to vacate the execution of this sentence.

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
MAR 17 2009

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER AND JUDGMENT OF CONTEMPT

JAMES PARKER, et al.,
Defendants

_____/

This matter came on regularly for hearing on the Order of Examination on March 17, 2009, at 8:30 a.m. before the Hon. Robert S. Boyd, Judge Presiding. Counsel Charles Jensen was present on behalf of Plaintiff/Judgment Creditor; Defendant/Judgment Debtor James Parker was present in pro per.

[*The Court summarized the information being sought*:]

> The appeal review now having been denied, the appeal comes back to the Court. So at this time, Mr. Parker, are you willing to answer the questions posed by Mr. Jensen, including turning over

> the bank records, filling out the written questionnaire, wanting the – reflecting bank records, and providing a copy of your California driver's license? (Transcript at 3:1-8) [*James Parker replied*:] "Well, Your Honor, we still feel that the hearing is premature." (Ibid at 3:9-10) [*Charles Jensen disagreed with Defendant*:] "The [$20,720 award] has been fully adjudicated. And, as the Court recalls at the last hearing here, they said, 'Well, because it's pending at the Supreme Court, we shouldn't go forward.' The Court accepted that. The Supreme Court has ruled on it. That matter is dead." (Ibid at 5:4-10) [*Charles Jensen explained*:] "We were continued to today's date because the State appeal was still pending as of the last hearing. The California Supreme Court ruled. It ruled. It had been denied. We are prepared to go forward." (Ibid at 5:17-21) [*The Court ruled*:] "I've not read the materials just handed to the Court, but at this time, the Court is not aware of any pending appeal or pending stays of the enforcement of the judgment. Therefore, the Court believes it appropriate now to proceed with enforcement. The intention to file an appeal has no bearing upon this Court's ability or the appropriateness of this Court, of course, having to go ahead and provide the judgment." (Ibid at 5:22 to 6:3)

In the immediate view and presence of the court, defendant/judgment debtor James Parker appeared before this court pursuant to an order or examination of a debt owed by defendant/judgment debtor to plaintiff/judgment creditor. Mr. Parker

was placed under oath and the court ordered him to answer the written questions provided by counsel for plaintiff/judgment creditor, provide copies of the requested bank statements, copies of statements on investment accounts, and his California driver's license. Mr. Parker refused to answer the questions. Mr. Parker was then warned by the Court that if he refused to answer the questions, he was exposing himself to a finding of contempt and the imposition of a fine not exceeding $1,000, or imprisonment not exceeding five days, or both. Mr. Parker, acknowledging that he had heard this warning, again refused to answer the questions ordered by the court to be answered. A full transcript containing this occurrence will be prepared and will be attached and made a part of this order and judgment as soon as available.

[*Defendants comment in their March 19, 2009 Update*:]

> On January 20, 2009, the Honorable Robert S. Boyd (acting on information from the California Supreme Court that the status of Defendant's appeal from a $20,720 fees award, S169634, would be decided no later than March 11, 2009) set a March 17, 2009 resumption date for OEX proceedings, whose focus is the enforcement of

> this $20,720 judgment. However, in part due to circum-stances set forth in our February 17, 2009 Mandamus Petition [S171792], the procedural posture of Defendants' case is not nearly as clear-cut as we and Judge Boyd hoped it would be at this juncture. (California Supreme Court filing re OEX Interference with Ongoing Appeal of Federal Issues at 1.)

The Court heard and considered Mr. Parker's explanation and reason for refusing to answer the questions. The court rejected such explanation and excuse because it was premised on Mr. Parker's statement he intended to file a writ of certiorari in the United States District Court attacking the validity of the judgment that the obligation to answer these questions was therefore premature.

> [*Defendants' March 19, 2009 Update comments*:]
>
> **We DO NOT believe that Judge Boyd has a dismissive attitude toward the Federal Due Process and Equal Protection guarantees set forth in the Bill of Rights and the Fourteenth Amendment.** However, Judge Boyd treated Defendants' attempts to seek enforcement of these rights *vis a vis* the $20,720 fees judgment, as being of little consequence (perhaps because he misconstrued our effort, as intending to start an inevitably time consuming action in Federal District Court, when in fact, we plan a direct appeal to the U.S. Supreme Court pur-

> suant to 28 U.S.C. Sec 1257, which has a 90 day filing deadline after denial of discretionary review by a State's highest court). (Id.at 2.)

The debt forming the basis of the order of examination is one of three judgments for attorney's fees ordered against Mr. Parker pursuant to his unsuccessful defense of an unlawful detainer action in 2007. A lengthy series of appeals of that court judgment, beginning with the Appellate Division of the Sonoma County Superior Court, and proceeding then to the First Appellate District of the Court of Appeal and then to the California Supreme Court, have all resulted in denials of petitions for review. The three California Supreme Court case numbers are S163276, S168827 and S169364. At this time there is no pending appeal nor stay issued against this court prohibiting it from hearing enforcement actions on the underlying debt.

The history of this matter is the following:

On April 14, 2008 [Judge Boyd probably means July 14, 2008], defendant James Parker was ordered by the court to answer written questions and provide copies of bank statements, investment accounts, and a copy of his California driver's license. The matter

was then continued to July 21, 2008, for an Order to Show Cause in re compliance with the court order.

On July 21, 2008, Mr. Parker's refusal to answer the questions was taken under submission and on July 23, 2008, an order was issued by the court staying the pending enforcement action on the debt to allow resolution of the Court of Appeal actions. [Judge Boyd in fact argued when OEX proceedings resumed, that his order DID NOT cover discretionary review by the Court of Appeal or Supreme Court.]

On December 15, 2008, Mr. Parker again declined to answer the questions. He was found in contempt pursuant to Code of Civil Procedure section 1290(a)(5) and an Order to Show Cause was set for December 19, 2008, for a hearing on why sanctions should not be imposed.

On December 19, 2008, Mr. Parker was found in contempt and ordered to serve three days in the county jail stayed to January 6, 2009.

On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009.

On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this

matter. The matter was put over to March 17, 2009, for further proceedings.

On March 17, 2009, Mr. Parker was again ordered to answer the questions and declined to do so. The court offered Mr. Parker an opportunity to present an explanation or excuse for his conduct which, as discussed above, the court found insufficient to provide a basis for refusing to answer the questions. All appeals have concluded with the denial of petitions for review. Therefore, the court finds Mr. Parker guilty of contempt of court in violation of Code of Civil Procedure section 1290(a)(5).

Mr. Parker is sentenced to serve three days in the county jail. [*The Court provided this alternative*:]

> One other thing I want to say. If the Court is advised by Mr. Jensen that between now and 5:00 p.m. on Friday, when the Court closes for the weekend, that you have changed your mind and agreed to provide the information, the Court will release you from the obligation to serve the jail sentence. I want to give you every opportunity to provide the information and not to put yourself in jail. So I will be here until 5:00 o'clock on Friday. And if I hear from Mr. Jensen that you have complied, I will release you from the obligation to go to jail. (Ibid at 13:17-28)

Mr. Parker is ordered to turn himself in to the

Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. [*James Parker said he would seek reconsideration*:]

> Would your Honor accept a motion for a stay on Friday morning? [*The Court asked*:] "A motion for a stay?" [*James Parker confirmed*:] "Right." [*The Court replied*:] "It would entirely depend upon the basis of the motion --" [*James Parker continued*:] "But you would be willing to accept –" [*The Court answered*:] "If you can convince the Court that there is a reason for the sentence to be stayed, the Court would review it. But you need to – I'm not sure what that would be." (Ibid at 15:13-24)

Mr. Parker is to be held in custody without bail for three days. [Defendant's Affidavit re Issues Raised in March 17, 2009 and March 20, 2009 Order of Examination Proceedings affirms:]

> At the Tuesday, March 17, 2009 OEX hearing, after imposing a contempt finding and three day jail sentence on James Parker (to start at 7 PM on Friday, March 20, 2009), Judge Boyd agreed to consider any last minute arguments Defendants were able to put together on Friday morning March 20, 2009. While we cannot quote Judge Boyd's exact words (because the transcript is not yet available), there is nothing in what he said to indicate that he would not allow oral argument as part of his process of consideration. When Judge Boyd acted, he treated our March 20, 2009 motion as an Ex Parte submission, and denied it without comment (without allowing Defendant

Parker any opportunity to learn his reasons, much less discuss them. (Id. at 1:11-18)

IT IS SO ORDERED.

DATED: March 17, 2009

ROBERT S. BOYD
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

ENDORSED
FILED
MAR 20 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	**Unlawful Detainer** **Filed 6/1/07** Defendants' Memorandum Citing Grounds for Vacating Finding of Contempt and James Parker's Three Day Jail Sentence

The main focus of today's Defendants' motion to vacate is related to our upcoming filing of a Petition for Certiorari in the United States Supreme Court, but is more limited than the motion we offered on March 17, 2009. In this motion we seek only to protect our ability to research and prepare this Petition without interference, even though we continue to feel that it would be appropriate to await the outcome of this Petition, before undertaking any enforcement action relating to the $20,720 fees judgment (which our Petition will show is violative of our Fourteenth Amendment Due Process rights). This matter is squarely within the ambit of our

"Extra Front Squeeze" complaint raised in our February 17, 2009 Petition for Mandamus (S170538), even though the impetus for this Petition was interference with our appeal rights by Judge Rushing, not this Court's OEX proceedings. See *Varian Medical Systems* (Appendix H, Note 21.161).

I. INTRODUCTION AND CONTEXT

Appendix H (at 40-41) give the full text of this Court's Order of July 23, 2008 (in its context of ongoing developments in the case). The most important line in that Order states: "the court now having received the various documents provided by the parties and more importantly reviewed the court file of the matter." In its previous contempt findings (which were vacated because the court granted Defendants' motion challenging jurisdiction "pursuant to the authority of Code of Civil Procedure section 916"), this Court considered the statutes and caselaw cited by Defendants, and called them back to find out if we were determined to stick to our position that the Court's order was unlawful (as is EVERY order issued by a court that acts outside the limits of its jurisdiction).

Moreover, this Court had a transcript in hand which clearly stated its original questions Defendant Parker declined to answer, before the questions were repeated at the next session and the possibility of issuance of a contempt finding was raised. Here, everything is combined into a single proceeding, and the Court's Order of March 17, 2007 says (1:28 to 2:2): "A full transcript of this proceeding containing this occurrence will be prepared and will be attached and made part of this order and judgment as soon as available." Defendants believe that a finding of direct contempt must be based on an actual transcript, not issued in anticipation of a transcript, but supported at the time of issuance only by the Court's memory (in a context where the actual words are very important). The Court's order of March 17, 2009 says (3:3-5): "On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009. On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this matter." We still have a pending appeal (S170538) which may be procedurally relevant to any proceedings which may interfere with our exercise of our Federal appellate rights (as

will be explained in the closing section). However, regardless of all other considerations, we believe that the two week interval allowed by the Court before taking its most recent action is essential to achieving justice AND saving time for all concerned, in the long run.

Before proceeding further, we offer a line-by line analysis of the March 17, 2009 Order.

II. ANALYSIS OF STATEMENT OF CASE AND COURT'S FINDINGS

A. Opening Statement of the Order of March 17, 2009

> This matter came on regularly for hearing on the Order of Examination on March 17, 2009, at 8:30 a.m. before the Hon. Robert S. Boyd, Judge Presiding. Counsel Charles Jensen was present on behalf of Plaintiff/ Judgment Creditor; Defendant/Judgment Debtor James Parker was present in pro per. (Transcript at 1:14-17)

Co-Defendant Michael Halliwell was also present, and must reimburse Defendant Parker for any fees he pays, according to a long standing agreement that is as binding as any contractual fees obligation that James Parker may be thought to have under the rental agreement (see *Nelson v Adams* parallel in Note 10.74, in Appendix H). But in accordance

with the Court's continuing policy, Defendant Halliwell was silenced and not even allowed to sit at the Defendants' table. This exclusion was appealed, and our December 22, 2008 Notice of Appeal was acknowledged by the Appellate Branch that same day. Since a court cannot (consistent with CCP Sec 916) take action on any aspect of a case covered by an appeal, it cannot continue to conduct proceedings in a manner violative of Defendants' right to conduct their own case (see *Gray v Justice's Court* citation in Note 7.45 of Appendix H).

B. Scope of Parker's Refusal to Answer Questions

> In the immediate view and presence of the court, defendant/judgment debtor James Parker appeared before this court pursuant to an order of examination of a debt owed by defendant/ judgment debtor to plaintiff/judgment creditor. Mr. Parker was placed under oath and the court ordered him to answer **1)?** the written questions provided by counsel for plaintiff/judgment creditor, **2)** provide copies of the requested bank statements, **3)** copies of investment accounts, and **4)** his California driver's license. Mr. Parker refused to answer the questions. (Ibid at 1:18-24)

1)? There have been several attempts by Charles Jensen to force Defendant James Parker to answer his questionnaire, which Defendants feel has no

official status, and therefore requires an item-by-item authorization by the court. Most recently, Charles Jensen tried to "get the ball rolling" on this matter at the conclusion of proceedings on January 20, 2007, but the Court suggested he defer his effort until the scheduled March 17, 2009 hearing. There was no court reporter at the first OEX hearing (conducted by Judge Andrea K. Ritchie), but James Parker answered numerous financial questions (including his income) until he drew the line at questions which had no real connection to his ability to pay, but were only designed to harass and degrade him. Charles Jensen falsely claimed that Judge Ritchie required James Parker to answer his questionnaire, but Judge Ritchie's Courtroom Minutes do not back up that claim. At one point, Judge Boyd's Courtroom Minutes reflected Charles Jensen's claim that the Court had ordered James Parker to answer his questionnaire. However, this inaccuracy was rectified as soon as the Transcript came out (which showed that it was Charles Jensen, and not Judge Boyd, who had tried to force James Parker to answer the questionnaire).

2-4) At the first hearing James Parker admitted that he had a car (landlord Gus Paxinos already has his driver's license number) and a bank account (whose account number, Charles Jensen already knows). Apparently, Charles Jensen is able to secure information on the amount of funds in the account, because he referred to it as having been "cleaned out" in his comments at the first OEX hearing). As is reflected in her Courtroom Minutes, Judge Ritchie asked James Parker only two questions which he refused to answer (about his driver's license number and his bank account number).

The questions which Judge Boyd required James Parker to answer under penalty of a contempt sanction covered no fresh ground. James Parker contends that Charles Jensen has no right to seek a contempt citation based on information he already has, has ready access to, or he has no reason to believe exists. On March 17th nothing from Charles Jensen's questionnaire was read by Judge Boyd into the record as part of his contempt warning. The entire scope of James Parker's refusal to answer questions (and many other aspects of the Order of

March 17th) cry out for a delay until the hearing transcript is available, the parties have had a chance to analyze the transcript, and to submit the results of their analysis to the court for its consideration.

C. Judge Boyd Warns re a Possible Contempt Finding

> Mr. Parker was then warned by the court that if he refused to answer the questions, he was exposing himself to a finding of contempt and the imposition of a fine not exceeding $1,000, or imprisonment not exceeding five days, or both. Mr. Parker acknowledging that he had heard this warning, again refused to answer the questions ordered by the court to be answered. A full transcript of this proceeding containing this occurrence will be prepared and will be attached and made part of this order and judgment as soon as available. (Ibid at 1:24 to 2:2)

James Parker asked several times whether he could be ordered back to jail again if he still refused to give answers to questions he felt were beyond the scope of the court's authority, but Judge Boyd did not give a clear answer. A fair warning to a Defendant facing a contempt finding, should explain the total penalty he faces. An important part of contempt procedures is the lawfulness of the order the court is seeking to enforce, and it is not fair to send a person (whose job situation does not make the

weekend favorable) to jail on late Friday, Saturday and Sunday, when there is limited access to courts, where the person being jailed might seek to challenge the legality of his sentence. It is also difficult to see why, when the maximum penalty is five days in jail, the seriousness of James Parker's offense warrants a three day sentence.

D. Minimizing Reasons Parker Refused to Answer

> The court heard and considered Mr. Parker's explanation and reason for refusing to answer the questions. The court rejected such explanation and excuse because it was premised on Mr. Parker's statement he intended to file a writ of certiorari in the United States District Court attacking the validity of the judgment that the obligation to answer these questions was therefore premature. (Ibid at 2:3-7)

The Defendant James Parker made it entirely clear (by calling the Court's attention to a specific Supreme Court rule which set the deadline, and throughout his discussion of the matter that he intended to appeal to the United States SUPREME Court. It was Charles Jensen who raised the possibility of filing an action in Federal District Court, when he (falsely) claimed that the only way to secure federal review of Defendants' federal

grievances would have been to seek transfer to a Federal District Court, at the outset of litigation.

The statement in the Order of March 17th ignores the complicated matter of the proper application of California Supreme Court rules. If Defendants are successful (this matter is likely to be resolved soon) in showing that the 60 day period of California Supreme Court jurisdiction, starting with the filing of the last petition for Certiorari (on January 12, 2009), has been unfairly shortened by a court clerks error, they would be eligible for corrective action which might extend the High Court's jurisdiction up to thirty more days (under CRC 8.512(b)(1). When Judge Boyd asked the California Supreme Court how long it might take for it to decide on whether to review S169634, he was told (and announced in open court) that it might be as long as March 11, 2009. (The remaining 48 hours until the 60 day limit, are apparently reserved for action under the High Court's power set forth in CRC 8.512(c)(2) to act *sua sponte* to reverse a denial of review. If the High Court were to consider the March 6, 2009 and March 12, 2009 materials (resubmitted on March 19, 2009 as part of our Mandamus Update in S170538) to be

sufficiently persuasive, they could use their broad mandamus power to reopen the question of review, and use their power to remand to another court (such as the First District Court of Appeal) to reopen the $20,720 attorney's fees issue (or even take the unlikely step of reviewing this matter themselves).

The order of March 17th also ignores Defendants' third basis for claiming that immediate resumption of OEX proceedings would be premature (interference with other aspects of the case with overlapping schedules of consideration). How to deal with this situation is the focus of our Mandamus appeal (S170538), and is the focus of Defendants' motion in Section III.

E. Fairness requires letting Defendants run their case.

The debt forming the basis of the order of examination is one of three judgments for attorney's fees ordered against Mr. Parker pursuant to his unsuccessful defense of the unlawful detainer action in 2007. A lengthy series of appeals of that court judgment, beginning with the Appellate Division of the Sonoma County Superior Court, and proceeding then to the First Appellate District of the Court of Appeal and then to the California Supreme Court, have all resulted in denials of petitions for review. The three California Supreme Court case numbers are

> S163276, S168827 and S169634. At this time, there is no pending appeal nor stay issued against this court prohibiting it from hearing enforcement action on the underlying debt. (Ibid at 2:8-16)

The fact that Defendant Halliwell provided nearly all of the unsuccessful defense of the unlawful detainer action in 2007, makes it especially inappropriate for disallowing him from participation in fees issues which arose from this defense, and our inextricably intertwined with it. The repeated adjournments and restarts in OEX proceedings are a direct result of the edict requiring defendants to "change horses in the middle of a stream," and have definitely been a hindrance (see Note 7.45 in Appendix H) to Defendant Parker's handling the defense all by him self, thereby satisfying the third prong of the *Powers v Ohio* test for *jus tertii* (indirect injury standing). The other two prongs of the *Powers* criteria, are closeness of relationship (being evicted together) and injury in fact (no one disputes the reality and long duration of Defendants' cost sharing agreement). As of 4:30 PM on March 19, 2009, when Defendants made their Update filing at

the California Supreme Court in San Francisco, S170538 was still pending.

F. As July 23, 2008 Order held, OEX was premature

> The history of this mater is the following: On April 14 2008, defendant James Parker was ordered by the court to answer written questions and provide copies of bank statements, investment accounts, and a copy of his driver's license. The matter was then continued to July 21, 2008 for an order to show cause in re compliance of with the court order. On July 21, 2008, Mr. Parker's refusal to answer the questions was taken under submission and on July 23, 2008, an order was issued by the court staying the pending enforcement action on the debt to allow resolution of the Court of Appeal actions. (Ibid at 2:17-24)

This court fully understands that state court rulings at any level can be overturned by an order of the United States Supreme Court. Don't Appendices G and H show that there are an abundance of federal aspects relating to the fees issues in dispute? Why isn't this sort of resolution given the same respect, by this court, as a ruling by the California Supreme Court?

G. On January 20, 2009 OEX was STILL premature

> On December 15, 2008, Mr. Parker again declined to answer the questions. He was found

> in contempt pursuant to Code of Civil Procedure section 1290(a)(5) and an Order to Show Cause was set for December 19, 2008, for a hearing on why sanctions should not be imposed. On December 19, 2008, Mr. Parker was found in contempt and ordered to serve three days in the county jail stayed to January 6, 2006. On January 6, 2009, the imposition of the jail sentence was stayed until January 20, 2009. On January 20, 2009, the finding of contempt was vacated based upon the pending appeals in this matter. The matter was put over to March 17, 2009, for further proceedings. (2:25 to 3:7)

Would it be fair to say that all the ordeal that James Parker was put through by premature OEX proceedings, was on account of contempt of Statute and Caselaw on the part of Sonoma County Superior Court jurists? Why is it fair to attribute a contemptuous attitude to James Parker, rather than give a fair examination to his reasons for believing that the law is on his side, in spite of all the judges on the other side? Whatever happened to the decent respect for the opinions of mankind which is proclaimed in the American Declaration of Independence? Why not continue the process of examining the underlying legal issues in an orderly way, instead of a rush to justice which implicitly blames James Parker for all the past delays?

H. What governing precedent supports this ruling?

On March 17, 2009, Mr. Parker was again ordered to answer the questions and declined to do so. The court offered Mr. Parker an opportunity to present an explanation or excuse for his conduct which, as discussed above, the court found insufficient to provide a basis for refusing to answer the questions. All appeals have concluded with a denial of petitions for review. Therefore, the court finds Mr. Parker guilty of contempt of court in violation of Code of Civil Procedure section 1290(a)(5). Mr. Parker is sentenced to serve three days in the county jail. Mr. Parker is ordered to turn himself in to the Main Adult Detention Facility at 7:00 p.m. on Friday, March 20, 2009. Mr. Parker is to be held in custody without bail for three days. IT IS SO ORDERED. (Ibid at 3:8-19)

III. DEFENDANTS' STAY MOTION

As nonlawyers, Defendants have to discover the law as they go along. Even so, they have put together a Petition for Mandamus that has survived since February 17, 2009 in the California Supreme Court. Compare this to the SAME day rejection of Defendants' Mandamus Petition to the First District Court of Appeal, in what became S169634. It would certainly appear that there is something worthy of consider-ation here, and Defendants hereby seek

postponement of further OEX proceedings, while S170538 remains alive in the California Supreme Court. Their authority for this motion is *Varian Medical Systems, Inc. v Delfino* (2005) 35 Cal 4th 180, 190:

> A trial court proceeding also affects the effectiveness of an appeal *if the possible outcomes on appeal and the actual or possible results of the proceeding are irreconcilable.* .... Finally, a proceeding affects the effectiveness of the appeal *if the very purpose of the appeal is the avoid the need for the proceeding.* In that situation, *the proceeding* itself is inherently inconsistent with a possible outcome on appeal and *must therefore be stayed under section 916, subdivision (a).*

Dated: this 20th day of March, 2009

Michael Halliwell Defendant pro se	James Parker Defendant pro se

Hon. Robert S. Boyd
Judge of the Superior Court
Courtroom 21, 3035 Cleveland Ave, Suite 200
Santa Rosa, CA 95403
Telephone: (707) 521-6725

FILED
APR 17 2009

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER VACATING HEARING ON APRIL 21, 2007

JAMES PARKER, et al.,
Defendants

_____/

This court, on its own motion, hereby VACATES the hearing scheduled for April 21, 2009, at 8:30 a.m. in Courtroom 17, as premature and unnecessary.

The creditor is to initiate further proceedings in this matter if desired.

IT IS SO ORDERED.

DATED: April 17, 2009

ROBERT S. BOYD
Judge of the Superior Court

E. $20,720 Brief-Reading-Only Attorney Fee

1. Defendants' 4/30/08 plea to delay fees hearing. **120**

2. Judge Rushing's 5/6/08 $20,720 Fees Award. . **122**

3. Defendants' 5/27/08 fees award Appeal Notice. **123**

4 5/6/08 Hearing Transcript available on 9/15/08 **125**

5.Defendants 10/14/08,11/5/08 re 2-front squeeze **129**

6. Evasions preceding the 11/20/08 fees hearing . **133**

7. 12/5/08 Order upholds $20,720 Fees Award. . . **135**

8. Court of Appeal 1/2/09 Mandamus Denial. . . . **137**

9. Appellate Branch 1/5/09 Rehearing Denial . . . **138**

10. Appellants' 1/12/09 judicial evasions protest . **139**

11. Appellants'1/12/09 concealed censure protest **142**

12. Supreme Court 2/18/09 Denial of Review. . . . **146**

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

'08 APR 30
1:02 pm
Sonoma County
Superior Court

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos Plaintiff/Respondent, vs. Michael Halliwell & James Parker Defendants/Appellants	No. MCV-191306 **Unlawful Detainer** **Filed 6/1/07** Defendants' Petition to Presiding Judge Owen to Postpone May 6, 2008 Attorney's Fees Hearing

This Petition seeks postponement of all motions and appeals concerning attorney fees until serious impediments to Defendants' ability to respond (relating to the status of the Case File are removed). The major obstacle facing Defendants is the prolonged delay in consideration of their Appeal of November 21, 2007, for which they seek clarification and some follow-through on a commitment which they received from the Chief Appeals Clerk (that a Chronological Index would be prepared as soon as possible, and that a revised briefing schedule would be promptly sent out).

Defendants unsuccessfully sought a copy of a February 5, 2008 Appellate Branch ruling which

formalized the under-standing with the Chief Appeals Clerk, but the Case File was unavailable (due to preparation of the Chronological Index, so all they could obtain on this subject was the attached title listing of ORDER VACATING NOTICE OF TIME AND PLACE TO FILE BRIEFS (FILED 1/14/08) printout from the computer).

Dated: this 30th day of April, 2008

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

Charles T. Jensen SBN 69044
Kadin Blonski SBN 244856
1622 4th St. Santa Rosa, 95404
707-527-9911 Fax:707-527-0908

ENDORSED FILED
MAY 6 2008

Attorney for Plaintiff
Chrysanthe Paxinos

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos) Case No. MCV-191306
Plaintiff, vs.) (Unlawful Detainer Case)

James Parker et al.) JUDGMENT AFTER MOTION
Defendants.)

Plaintiff CHRYSANTHE E. PAXINOS's motion for attorney's fees came on for hearing, Tuesday May 06, 2008, in Department 19 of the above court, the Honorable ELAINE RUSHING, Judge presiding. A tentative ruling was issued and the Defendant requested oral argument. The Plaintiff was represented by Kadin W. Blonski and Charles T. Jensen, the Defendant JAMES PARKER represented himself. After oral argument, decision was given in open court, the above parties present.

The Plaintiff's motion for attorneys fees for Plaintiff CHRYSANTHE E. PAXINOS as to Defendant JAMES PARKER only is granted in the amount of $20, 680.00 and $40.00 for filing fee.

Dated: May 6, 2008

_____
Honorable ELAINE RUSHING
Judge of the Superior Court

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

ENDORSED
FILED
MAY 27 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Michael Halliwell &
James Parker
Defendants/Appellants

Unlawful Detainer
Filed 6/1/07

Defendants' Notice of Appeal re May 6, 2008 Fees Award and Analysis of Specific Billing Items

Defendants James Parker and Michael Halliwell hereby appeal the May 6, 2008 award of $20,680 in attorney's fees and $40 for filing fee by Judge Elaine Rushing, on both procedural and substantive grounds. Since Charles Jensen's successful motion seeking this award was an across-the-board challenge to Defendants' filings, the only effective recourse in the present circumstance is an across-the-board defense. (See specific quotations *infra* from every one of the documents which Respondent dismisses as "whimsy, dribble and nonsense.") Charles Jensen did not file ANYTHING as a result of the reading for which he seeks payment, which is allocated proportionally by $ amounts following each Case

Record (CR) citation. Nor did he say ANYTHING related to these filings at the January 24, 2008 Appeal Hearing. (See accompanying January 24, 2008 Hearing Transcript Appendix.) Charles Jensen's basis for seeking payment is: "Defendant's forced plaintiff's counsel to read all his papers. Unfortunately counsel was not in a position to assume they were all a joke. An old Irish saying states 'even a blind pig can find a truffle every now and then.'" *Serrano v Unruh* (1982)32 Cal 3d 621, 635 holds that "[A party's obligation to pay fees should not produce] a 'Hobson's choice' designed to prevent their voicing legitimate objections." At the May 6, 2008 hearing Charles Jensen refused to identify ANYTHING in Defendants' filings which did not fit within this "safe harbor." Accordingly, Charles Jensen, WHO DID NOT SEEK ANY COMPENSATION IN HIS SUPPORTING MOTION FOR HIS OWN PREPARATION OF DOCUMENTS, **is NOT entitled to any fees at all for his work in the appellate proceedings in this case.**

Dated: this 27th day of May, 2008

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

James Parker & Michael Halliwell
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526 halliwel@csulb.edu

TRANSCRIPT FILED
SEP 15 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Defendants' Analysis
of May 6, 2008 Hearing
Transcript

Trial Court and Court of Appeal Fees Evasions

Because Judge Rushing's $20,720 fees award consists entirely of a reading fee (there is absolutely no work product claimed, nor any attendance at hearings) all the issues in her first fees award reappear as Charles Jensen now demands to be paid for reading briefs primarily directed at trying to get the fees adjudication process properly on track. Just how far a field from normal standards of awarding attorney's fees Charles Jensen and Judge Rushing are, is clear from this "closest approach" to the merits at the May 6, 2008 fees hearing. James Parker analyzes Charles Jensen's charges:

> I want to read a quote here and – in a March 26th document which was the perfunctory opposition

to reconsideration, Charles Jensen had a very dismissive tone, and he's always had a very dismissive tone to us as though we're nothing and nobody. Let me read this, if I may, Your Honor. Charles Jensen's dismissive tone continues in his March 26th 2008 perfunctory opposition to reconsideration where he refers to defendants' completely accurate quotations and citations, which are cross-indexed as thoroughly as time permitted us to be able to do as, quote "whimsy, dribble and nonsense," unquote.

He continues: "Nowhere were there or are there cohesive legal thinking and conclusions based on law and the facts of this case," end quote. In his effort to justify $20,000 in additional fees for this sort of work product, Charles Jensen's recent motions without proof of service declares without a semblance of any supporting examples – one last sentence and then a question. And this is what he wrote: "Defendants forced plaintiff's counsel to read all of his papers. Unfortunately, counsel was not in a position to assume they were all a joke. An old Irish saying states: 'Even a blind pig can find a truffle every now and then.' These were not easy papers to read either. The arguments, and the term is used loosely, we they were disorganized and incoherent at best."

First of all, defendants resent being likened to pigs finding a truffle. This has been his attitude towards us all along, that we were nothing but scum, but that's neither here nor there. But the point is he's never – he's never controverted with law any of the citations that we have – that we've briefed – briefed him on. All he has said is

> they're "dribble, nonsense and whimsy" so I would like to ask the Court to ask him what percentage of those citations that we issued -- what fraction are "whimsy, dribble and nonsense?" (Transcript at 16:9 to 17:14)

Judge Rushing answered: "I'm not going to ask that question." (Transcript at 17:15-16) James Parker replied: "One last thing, then. Okay. I would just like to ask one more question. Can he now cite any one citation that's "whimsy, dribble and nonsense?" Judge Rushing said: "I'm not going to force him to do that." (Transcript at 17:20) James Parker resumed: "Defendants take exception to that because – all his argument is it's all garbage. He's never controverted a single one of our citations, and they are scholarly, and they're well documented." (Transcript at 21-24)

Defendants haven't had the slightest success in dislodging the First District Court of Appeal from its posture of total silence in the face of Judge Rushing's flimsy and evasive process of adjudication of the fees issue. Here is what Defendants say on the Face Sheet of their November 19, 2008 Petition for Mandamus (in A123266):

If for any reason a Superior Court is permeated

with animus toward litigants *in propria persona*, no one would doubt that its Appellate Branch would be easily able to run circles around even the most intensive effort by *Pro Per* defendants to defend their rights. (Self represented plaintiffs at least are able to choose their own legal ground.) Defendants who are assaulted by an unethical attorney in an unlawful detainer case have very little opportunity to learn what they must quickly enough to make tenants' rights a living reality. Their first line of defense must be a trial judge committed to the rule of law. If instead their case is assigned to a judge who has been censured for her dishonesty by the Commission on Judicial Performance (who has admitted to favoritism in her courtroom as part of a plea bargain to avoid consideration of the possibility of her removal from the bench), they are utterly at the mercy of an Appellate Branch whose intent is to provide a musk ox style stockade defense for a wounded colleague. That procedural evasions are the order of the day, not any sincere belief by the Appellate Branch that the rulings of the trial court are legally proper, should be evident from comparing the history of the case (summarized in Parts I, II and III, *infra*) with the refusal to confront Appellants' charges that comes across so clearly in Respondent's evasive Opposition Brief. The only effective remedy in the present circumstances is a writ of Mandamus ordering the Appellate Branch to vacate its unexplained Order of October 7, 2008, and also directing the Presiding Judge of the Sonoma County Superior Court to make arrangements for a replacement hearing conducted in accordance with Due Process of Law.

James Parker & Michael Halliwell
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TWO-FRONT SQUEEZE
OCT/NOV 2008
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Defendants' Overload from Overlapping Time for Brief Preparation

Defendants' February 2, 2009 Petition to Presiding Judge Owen protested an ongoing "two/three front war" involving $10,118, $20,720 fees and OEX proceedings. Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition complains: Judge Chouteau stalls when it hurts Defendants, acts swiftly when it hurts them.

Defendants' November 5th Appendix re May 6, 2008 Transcript (5:8-14) states:

> In his October 27, 2008 Reply Brief (LNT at 9:18-19) Charles Jensen asserts: "There has been no intent on the part of counsel to rob these litigants of due process." This is a reference to James Parker's protest at the May 6, 2008 hearing that Charles Jensen "brought a two-pronged attack against us" in deliberately timing his $20,720 fees motion so that it would reach a critical

> juncture when defendants faced crucial filing deadlines with respect to Judge Rushing's earlier award of $10,000 in attorney's fees (Transcript at 6:8-10). Plaintiff's co-counsel Kadin Blonski responded "we're under no obligation to time our motions to go along with whatever they have going on." (Transcript at 9:18-20) Mr. Blonski also added this false statement in support of his two-pronged tactic: "There's been no motion at all for a continuance other than what was just made orally." (Transcript at 9:14-15) Charles Jensen knew this to be false because he received a copy of Defendants' April 30, 2008 Petition to Postpone May 6, 2008 Hearing on Attorneys Fees (CI 3710-3714). (See Item #8 of Transcript Analysis.)

Our Motion for Rehearing re Order of December 5, 2008 (25:16 to 26:8) says: Our October 14, 2008 Petition for Proper Briefing Prior to Appeal Rulings says:

> Since litigants in *pro per* must learn the law as they go along, it is very difficult for them to "keep their heads above water" when they are forced to fight a two (or three) front war. The scheduling of a $20,000-plus attorney's motion so that its briefing and hearing (March 25, 2008 to May 6, 2008) overlapped the filing deadlines for higher court review of their July 24, 2007 appeal of pre-trial and trial issues and briefing on Judge Rushing's off-the-record transfer of $10,118 of Defendants' funds to Charles Jensen. <u>This confluence of deadlines did not have to occur.</u> **a)** It took until November 5, 2007 for a briefing order to be issued for Defendants' July 24, 2007

appeal.[1] **b)** The listing in the Chronological Index for the 1/14/2008 briefing order which originally set a June 26, 2008 hearing date for Defendants' November 21, 2007 Appeal has the correct date, but it also lists this order as "Notice of Time and Place for Filing Griefs."

This briefing was aborted on account of a dispute over a missing Chronological Index, noted in Judge Chouteau's order of February 5, 2008 (CI 03412). It took until May 13, 2008 to get the Chronological Index updated and briefing re-instated. (For some reason this briefing order is not included in a later edition of the Chronological Index up through 8/29/08.) **c)** Judge Chouteau took no action for more than two months on Defendants' February 4, 2007 "Petition to Presiding Judge Knoel Owen re No-Notice Change in Policy Allowing Copies of Filings in Record Designations" (CI 03198), which had been referred to him. (The Court Clerks would not say who they meant by "the judges don't like it" with respect to disallowing the use of CR numbering by Defendants, but Supervising Judge of the Civil Division Elaine Rushing bears responsibility for this decision, and her file manipulation was the reason why Defendants felt obliged to institute their CR numbering.) On April 18, 2008 Judge Chouteau signed an order saying: "Appellants Petition re No-Notice Change is denied." (CI 03991) However, this order was not filed and served on the parties until May 23, 2008. **d)** On April 30, 2008, in full compliance with everything the window clerks asked of them, Defendants filed their "Petition to Presiding Judge Knoel Owen to Postpone May 6, 2008 Hearing on

Attorneys Fees." The window clerks informed Defendants to check Box 73 in the Hall of Justice for a response. They checked Box 73 repeatedly up until the May 6, 2008 hearing was upon them, but no action was apparently taken on this motion. (Id. at 62:2 to 63:5)

James Parker, Defendant pro se
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HEARING
NOV 20 2008

CALIFORNIA SUPERIOR COURT,

SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Interlocking Attorney
Fees Maneuvers Used
against Defendants

Evasions leading up to 11/20/08 fees hearing

The Appellate Branch went from one evasion to another in its effort to avoid squarely addressing the fees issue. After it decided that "reaching out" to deal with this issue **before** the underlying transcripts were available for briefing, would not pass the "smell test", it decided to try to undermine Defendants' motion directed against their October 7, 2008 written Ruling After Appeal, by treating its September 25, 2008 bench ruling as being the linchpin for the allowable period for petitioning for a rehearing. This is proclaimed in its November 17, 2008 Ruling on Petition for Rehearing: "The Petitions For Rehearing (erroneously titled Motion

For Reconsideration) is denied. The decision became final on October 24, 2008 and any motion for rehearing is deemed denied as of that date. Alternatively, the petition lacks merit and is denied on that basis." This November 17, 2008 Ruling was **delayed** so that it was impossible to challenge it in the First District Court of Appeal before the deadline for appeal there, and this Ruling was cited by Respondent as grounds for establishing Res Judicata for the $10,118 fees award (and for justifying the $20,720 reading-only-fee device used to penalize Defendants for documenting and analyzing this aspect of the case, to try to preserve the possibility of effective upper-level state and federal review).

FILED

DEC – 5 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
APPELLATE DEPARTMENT

CHRYSTANTHE PAXINOS,	)	
	)	No. MCV-191306
Respondent/Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
JAMES PARKER, et al.,	)	
	)	
Appellant/Defendant.	)	
	)	

This matter was set for oral argument on the appellate calendar of November 20, 2008. Seated en banc were the Honorable Rene Auguste Chouteau, presiding, the Honorable Dana Beernink Simonds and the Honorable James Bertoli. Charles Jensen, Esq. was present on behalf of the plaintiff/ respondent. James Parker and Michael Halliwell defendants/appellants in pro per were present

The trial court's attorney fee Order is **AFFIRMED**. De novo review indicates that an award of attorney's fees was proper and review of

the record under the abuse of discretion standards indicates that the amount of attorney's fees is also proper.

Dated: November 24, 2008

Per Curiam

RENE AUGUSTE CHOUTEAU
Presiding Judge Appellate Dept

DANA BEERNINK SIMONDS
Judge of the Superior Court

JAMES BERTOLI
Judge of the Superior Court

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED

JAN 2 2009

MICHAEL HALLIWELL, et al.	)	
Petitioner,	)	A123622
v.	)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA,	)	
Respondent;	)	
CHRYSTANTHE PAXINOS,	)	
Real Party in Interest.	)	

Sonoma County
Superior Court
No. MCV-191306

BY THE COURT:

The petition for writ of mandate is denied.

Dated: Jan 2 2009 KLINE, P.J.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA **FILED**
APPELLATE DEPARTMENT **JAN 5 2009**

CHRYSTANTHE PAXINOS)	No. MCV-191306
Respondent/Plaintiff,	) RULING ON DEFENDANTS/APPELLANTS' MOTION FOR REHEARING RE DENIAL OF THEIR MAY 28, 2008 APPEAL
v.	
JAMES PARKER, et al.,	
Appellant/Defendant.	

Defendants' petition filed December 5, 2008 for the appeal heard by the Appellate Panel on November 20, 2008 is DENIED.

Dated: December 31, 2008

Per Curiam

RENE AUGUSTE CHOUTEAU
Judge of the Superior Court

DANA BEERNINK SIMONDS
Judge of the Superior Court

JAMES BERTOLI
Judge of the Superior Court

James Parker & Michael Halliwell
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ENDORSED
FILED
JAN 12 2009
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Appellants' Authorities
Supporting Reversal of
First District 1/2/09 Order

Defendants' Petition to Review (S169634) the $20,720 reading fee award (at 15-16), cites Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition. *Gamet v Blanchard* (2001) 91 Cal.App.4th 1276, 1283, grants Gamet relief:

> We conclude there was an abuse of discretion because of a combination of events. Nowhere in the record is there any indication the trial judge gave any consideration to Gamet's alleged personal and family traumas. The judge's comments that he could "jam" Gamet and that he wanted to "keep the heat on," when combined with the unexplained judgment dismissing the action shortly thereafter, seemed arbitrary and created the appearance of substantial unfairness. While keeping cases moving through the court system and preventing unreasonable delay is certainly an important goal, it is a goal meant to serve justice by resolving disputes as speedily as

> possible. When disposing of cases becomes an end in itself, justice and fairness can easily fall by the wayside, and it appears that is what happened here. (CR-755:21 to CR-756:9) (Id. at 37:10-16)

Appellants' January 2, 2009 First District Court of Appeal Mandamus Petition cites their November 5, 2008 Appendix re May 6, 2008 Transcript (at 7:3-17), noting:

> In his October 27, 2008 Reply Brief (LNT at 5:4-5) Charles Jensen justifies Judge Rushing's $20,720 ruling in his favor, which described in detail who attended the May 6, 2008 Hearing but said NOTHING AT ALL about the underlying merits: "The order, as written completely out in appellant's opening brief is more than sufficient under the law." (See Item #14 of Transcript Analysis.) After Judge Rushing ordered James Parker to desist from speaking further, the bailiff moved in very close behind Mr. Parker and Judge Rushing rejected Defendant's protest at this intrusion into his personal space, saying: "He can stand wherever he likes." Judge Rushing gave no reason at all for her decision, saying: "I'm deeming this motion submitted. I am granting plaintiff's attorney's fees award of $20,680 in attorney's fees and $40 in costs for the bringing of this motion. We are now adjourned." (Transcript at 17:4-7) Charles Jensen argues in his October 27, 2008 Reply Brief (LNT at 4:2-3) that the handling of the case has been in conformity with all legal requirements, saying: "Talk about a situation where the phrase 'STOP THE

MADNESS' is more than appropriate." In a very different sense than Charles Jensen intends, his statement is endorsed by a governing precedent cited in Defendants' Notice of Appeal:

> Judicial absolutism is not a part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without a hearing. When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence where the truth lies, application of the appropriate laws to the facts found, and a rendition of a judgment accordingly. (*Estate of Buchman* (1954) 123 Cal.App.2d 546, 560) (Id. at 41:2 to 42:3)

Dated: this 12th day of January, 2009

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

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ENDORSED
FILED
JAN 12 2009
No. MCV-191306

CALIFORNIA SUPERIOR COURT,
SONOMA COUNTY

Chrysanthe Paxinos
Plaintiff/Respondent,
vs.

Unlawful Detainer
Filed 6/1/07

Michael Halliwell &
James Parker
Defendants/Appellants

Appellants' Authorities re Judge Rushing's Duty to Disclose Censure by CJP

Defendants' Petition to Review (S169634) the $20,720 reading fee award (at 15-16) says:

> Appellants' January 2nd First District Court of Appeal Mandamus Petition quotes Defendants' November 5, 2008 Appendix re May 6, 2008 Transcript concerning Judge Rushing's Censure by Commission on Judicial Performance. In his October 27, 2008 Opposition Brief all that Charles Jensen would say concerning Defendants' quotations from the Commission's Report and Bob Egelko's June 9, 2006 *San Francisco Chronicle* article on this subject was: "This allegation is offensive and should be admonished." Egelko discussed Judge Rushing's censure "for driving drunk, lying about it and trying to get preferential treatment" and said of the CJP Report: "Superior Court Judge Elaine Rushing's criminal conduct was 'utterly irreconcilable with minimum standards expected of a judge,' and her attempt to use the prestige of her office for

personal advantage was 'reprehensible.'" Defendants quoted the CJP Report: "None of this behavior can be reconciled with either canon 1 or 2A or with the standard set by the Supreme Court in *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal 3d 826, 865, that honesty is a 'minimum qualification' expected of every judge." Beyond Respondent's saying that he was offended, Charles Jensen said nothing to dispute Defendants' parallels between Judge Rushing's behavior in the incident for which she was censured, and their own experience in her courtroom. The parallel most relevant to Charles Jensen was the observation in the CJP Report that Judge Rushing told Officer Holeman "that in her courtroom she goes against court policies for CHP and other officers, and that he should extend that courtesy to her." (Id. at 42:5 to 43:21) (See discussion in Footnote #31 of how *Haworth v Superior Court* (2008) 164 Cal.App.4th 930, 942, requires advance disclosure of a judge's having been censured by the Commission on Judicial Performance, and how a party is allowed to exercise his right to recuse such a judge, and to invalidate any rulings made by that judge when no disclosure of the censure has been made.)

#31. Neither Judge Rushing nor Charles Jensen have disclosed his role re CJP censure

Haworth v Superior Court (2008) 164 Cal.App.4th 930, 942 requires censure disclosure, citing "the repeated statements of the Legislature and the courts that neutral arbitrators must he held under the same standard of impartiality as the judiciary." The

opinion notes, "Judge Gordon did not disclose his censure prior to the arbitration, as required by California Code of Civil Procedure Section 1281.9." (164 Cal.App.4th at 936)

Haworth explains: "[Respondent Court] found that a reasonable person advised of Judge Gordon's censure would entertain a doubt as to his impartiality, requiring disclosure pursuant to CCP Sec 1281.9." (Ibid) The opinion adds, "Moreover, judicial discipline varies depending on the severity of the misconduct, ranging from advisory letters to outright removal from the bench, and censure is one of the most severe forms of discipline available." (Id. at 942) The California Supreme Court observes in *In re Gordon* (1996) 13 Cal 4th 472, 473:

> The Commission on Judicial Performance has recommended that we publicly censure Norman W. Gordon, a judge of the Los Angeles County Superior Court, for engaging in "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (c)(2).) Judge Gordon has not challenged the commission's findings or recommendation.

Haworth, *supra*, concludes, by upholding the invalidation of Judge Gordon's ruling:

> In sum, the facts of this case are such that a reasonable person aware of the circumstances would harbor a doubt as to Judge Gordon's ability to be impartial, so

> disclosure was required. Accordingly, Respondent Court properly vacated the [ruling below]. (Id. at 944)

Dated: this 12th day of January, 2009

Michael Halliwell	James Parker
Defendant pro se	Defendant pro se

Court of Appeal, First Appellate District,
Div. 2 – No. A123622

S169634

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MICHAEL HALLWELL, et al., Petitioners,

v.

SUPERIOR COURT OF SONOMA COUNTY,

Respondent;

CHRYSANTHE PAXINOS, Real Party in Interest

The petition for review is denied.

SUPREME COURT
FILED
FEB 18 2009
Frederick K. Ohlrich, Clerk

George, C.J. was absent and did not participate.

CORRIGAN

Acting Chief Justice

136

(2)

Supreme Court, U.S.
FILED
09-172 MAY 19 2009
OFFICE OF THE CLERK

No. 09-

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME II

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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May 18, 2009

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INTRODUCTION

This Supplement concerns rejection by Respondent from the court file[1], of Defendants' April 20, 2009 Petition for Certiorari in *Michael Halliwell & James Parker versus Superior Court of California, County of Sonoma*, a copy of which is required by Supreme Court Rule 29.3. Defendants sought reconsideration of the prior restraint order (pursuant to California Code of Civil Procedure § 391) on which this rejection is based, by the Superior Court. The Superior Court's prior restraint (whose April 17, 2009 Order to the Clerk of the Court at 1:26-27 covers "any document no matter how entitled or described in any existing case, or any appeal or request to the appellate division no matter how entitled") is overbroad within the meaning of *Nebraska Press Association v Stewart* (1976) 427 U.S. 539.[2]

As a threshold matter, it must be noted that exclusion of our April 20, 2009 Petition from the main case file, removes all evidence that a key trial court judgment (which has subjected Defendants to repeated premature enforcement activity) is still under appeal. The absence of this document also makes it impossible for any judge, in the proceedings which still continue in Sonoma County Superior Court, to determine if our April 20, 2009 Appeal constitutes "sham litigation" (a key factor in the leading First Amendment Court Access case *BE & K Construction Co. v NLRB* (2002) 536 U.S. 516).**[3]**

I. Tortured Application of Vexatious Litigant Law

The Order of April 17, 2009 grossly distorts California's Vexatious Litigant Law (CCP § 391).**[4]** The Order concedes (at 6:4-5): "Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases." Yet the Order to Show Cause by Superior Court Judge Elaine Rushing, treats Defendants' five discretionary appeals, in the still ongoing selfsame unlawful detainer case, as five separate cases "all of which have finally been determined against you."**[5]**

There is nothing in ANY of these denials of discretionary appeals, which remotely approaches the "law of the case" definition for finality in an ongoing (or refiled) lawsuit.**[6]** The one-judge rulings in #1, #2, and #3 say only: "The petition for writ of mandate is denied." This is never a disposition on the underlying merits under California law, only a denial of extraordinary procedural relief per CCP § 1086.

The relief sought in #1 was an order requiring the Appellate Branch of the Sonoma County Superior Court to respond to Defendants' Motion for Rehearing (which pointed out that the necessary transcripts to show what the trial court had done, had not been available in time for briefing on this appeal). In a May 7, 2008 letter, the Clerk of the California Supreme Court declined to accept Appendices A and B which provided and analyzed the long-delayed transcripts, and the State Supreme Court denied review of #1 in #4, in an order which said only: "The petition for review is denied." However, as the case continued, procedural evasions became more obvious, and the State Supreme Court accepted our Appendices C, D, E & F documenting

this situation. This encouraged Defendants to resubmit the crucial portions of Appendices A & B, in Appendix G (which is part of the Case Appendix in Our April 20, 2009 Petition for Certiorari). Our effort to untangle the situation set forth in Appendix G is the focus of S171792, now nearing the end of preliminary briefing in the State Supreme Court (on whether to grant review).

In #5, the State Supreme Court's Order said re #2: "The petition for review is denied." The issue here is some aspects of a $10,000 attorney's fees award. (Other aspects did not become a matter of record until a $20,720 fees award was made on May 6, 2008, and are discussed in connection with #3, *infra*.) This is the focus of Defendants' April 20, 2009 Petition for Certiorari, and this aspect of the case will not become final until a decision is made on whether there are sufficient federal grounds to support granting Certiorari, or a decision on the merits if Certiorari is granted. It goes without saying that a California Superior Court cannot make a valid order to block review of its actions by the U.S. Supreme Court, which is what Judge Rushing is trying to accomplish with her misuse of CCP § 391.

In #3, the underlying issue was another line of attack on Defendants' right to appeal (a $20,720 reading fee not tied to any work product or any issue on which Plaintiff had been determined to be the prevailing party). In Defendants' view the $20,720 reading fee is an attempt to punish Defendants for documenting (for the benefit of higher courts) the gross misconduct in prior proceedings by Plaintiff's counsel, which is being aided and abetted by Judge Rushing.

After Defendants' Petition for Mandamus (which eventually became S171792) was filed, but before Appendix G was accepted by the State Supreme Court, review was denied (this denial related to a less inclusive Defendants' Mandamus Petition in #3). In order to protect our right to federal review (of what Defendants feel is a deprivation of $20,720 without Due Process of Law), we must file a Petition for Certiorari on this aspect of the case before May 19, 2009. Defendants feel that the main purpose of Judge Rushing's trying to convert five interlocutory appeals (we face yet another fees award now under appeal before the Appellate Branch) into separate cases, is an effort by her to cripple our ability to

secure federal review of our federal rights, in what is still only one case (MCV 191306).

II. Adverse Effect of Restraint on Normal Appeals

The right, asserted in the Order of April 17, 2009, of a Sonoma County Superior Court to control what is said in appeals from its own actions, while the first and only litigation involved in a vexatious litigant finding is still going on, does not pit the rights of an accused defendant to a fair trial against First Amendment rights of free expression, as in *Nebraska Press Association v Stewart.* It is Defendants' right of free expression that is at issue in *Paxinos v Halliwell & Parker* (as MCV 191306 was known in its trial phase). NO COURT OUTSIDE OF SONOMA COUNTY HAS SAID A SINGLE WORD IN SUPPORT OF THE MERITS OF THE RULINGS OF THAT SUPERIOR COURT, so it is the right of Sonoma County Superior Court judges to be a law unto themselves, that is on the opposite side of the scales from Defendants' fair trial and free expression rights. The wholesale abrogation of the Bill of Rights itself, can be seen by applying the facts of *Paxinos v Halliwell & Parker*, infra:

Nebraska Press Association v Stewart (1976) 427 U.S. 539, 559 observes:

> The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.**[a]** A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted.**[b]** Only after judgment has become final, correct or other-wise, does the law's sanction become fully operative.**[c]**
>
> A prior restraint, by contrast and by definition, has an immediate and irreversible sanction.**[d]** If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time.**[e]** The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events.**[f]** Truthful reports of public judicial proceedings have been afforded special protection against subsequent punishment.**[g]**

A. The entire burden on Plaintiff, of Defendants' five discretionary appeals has been "light as a feather" inasmuch as NOT ONE SINGLE WORD HAS BEEN FILED BY ANYONE IN SUPPORT OF THE PROCEDURES AND SUBSTANTIVE RULINGS CHALLENGED IN THESE FIVE

APPEALS, IN THE DISTRICT COURT OF APPEAL OR IN THE CALIFORNIA SUPREME COURT.

B. A self serving definition of finality (when Sonoma County Superior Court judges have made it plain that they have no intention of addressing an issue), has prevented MCV 191306 from ever reaching a stage where "all avenues of appellate review have been exhausted."

C. Attorney's fees judgments have been prematurely enforced**[7]** by disallowing Defendants' right to appeal at all, then (after Judge Robert Boyd's retreat in his Order of July 23, 2008), by disallowing Defendants' right to appeal to the State Supreme Court; then (after Judge Boyd's retreat in his Order of January 20, 2009), by disallowing Defendants' right to appeal to the U.S. Supreme Court (followed by Judge Boyd's recognition in his Order of April 17, 2009 that he had again acted prematurely – in sending James Parker to jail for refusing to obey his unlawful order).

D. The harassment of Defendants in premature OEX (Order of Examination) proceedings was an irreversible sanction, unless some court is willing to grant Defendants a "fresh clock" to make up for the

appeal preparation time we have lost in SIX OEX Contempt of Court Hearings and diversion of research effort thereto (we are both nonlawyers).

E. Sonoma County Superior Court judges have tried to "chill" Defendants self expression **i)** by tacitly supporting an UNREVIEWABLE $4000 payment to Plaintiff's lawyer, for the privilege of having a reasonable time to move out (while we were under threat from Judge Gary Nadler of denial of our right to trial by jury); **ii)** by imposing a $10,000 fees award for having resisted Plaintiff's $4,000 demand; **iii)** by adding a $20,720 fees penalty on Defendants for writing our side of contested issues into memoranda seeking to defend our procedural rights; and **iv)** by another $19,000 fees award for protesting the off-the-record seizure of the $10,000, and fighting against the $20,720 award. Since we have not knuckled under to these threats, the most blatant, totally encompassing, prior restraint on our right to appeal one could imagine, is being used to try to freeze us out of any federal enforcement of our federal rights.

F. We are trying to do nothing more than communicate our plight to some higher court, willing to set

pen to paper to explain where Sonoma County Superior Court is right and we are wrong. The events we wish to call attention to are distressingly current, and for the past two years have been so time consuming that we have had time for almost nothing else (including looking for full time work by the one of us below normal retirement age, and engaging in political activity by the one whose ballot access law-suit was listed by Judge Rushing, then abandoned at the April 14, 2009 hearing by Judge Beaupre, as a basis for a vexatious litigant finding).

G. One would think that the truthfulness of Defendants' reports of our judicial proceedings, would have been a factor in a proper assessment of whether we should be branded as vexatious litigants. However, Judge Beaupre's Order of April 17, 2009, simply counts up the number of appeals we have filed, and the number of judges who have refused to intervene on our behalf, rather than his citing a single issue, among the several dozen we have raised, where our position is other than solidly supported by governing precedent.

Since the clearest evidence for the truth of what we say is the evasiveness of those who seek to

silence us, we ask only for the opportunity to file our Petitions for Certiorari **free from harassment and interference.** Whether this requested protection requires modification of filing deadlines, we will leave until later. (We prefer to wait until after the other side has had an opportunity to respond to this Application.)

III. So What Are Sonoma County Judges Hiding?

California's Unlawful Detainer Secret Trial Law makes a determined effort to keep consultants from finding out about cases and informing tenants of their rights.**[8]** In Sonoma County**[9]**, according to the Recourse Mediation service which tenants are told to contact on their Notice of the provisions of CCP § 1161.2(c), NO TENANT HAS EVER WON BY INVOKING A RETALIATORY EVICTION DEFENSE IN SONOMA COUNTY.**[10]** Judge Rushing wouldn't allow the jury in *Paxinos v Halliwell & Parker* to be informed of any OTHER aspect of California laws against arbitrary discrimination in housing. Therefore, nearly all tenants challenging eviction in Sonoma County, have lost within the 60 days that secrecy is supposed

to be in force under CCP § 1161.2(c). However, in Sonoma County **the secrecy apparently lasts for the entire duration of the case**, if this is what is necessary to beat a tenant into submission. All of the Case File Folders are stamped Secret (see Exhibit V-1 at CR-1068), and whenever a hearing takes place the listing outside of the courtroom says only "Secret Case" without mention of the names of the parties involved.

Before the files were open to the public, back-dated documents were inserted into them (that were missing for weeks, during which time Deputy Clerk's attested to their absence) and the Court sometimes threw away or rejected motions presented by Defendants in open court, when the Judge (Gary Nadler on June 21, 2007 and Elaine Rushing on September 25, 2007) could not think of any caselaw to counter that cited by Defendants. After the file became "public," whole folders (as documented in Exhibit V-1, *supra*) were unavailable at crucial points in the case, such as when the basis for awarding $10,000 to Plaintiff's counsel was the fabrication that "JAMES PARKER did not oppose the motion." (CR-515). Defendants Noticed an

October 17, 2007 File Integrity Appeal, which has been completely stonewalled by Appellate Branch Presiding Judge Chouteau.

The CR (Case Record) designations above are Defendants' device (a serial numbered duplicate copy of all filings, which they submitted as part of their designations of the record on appeal), which Judge Chouteau abolished on February 5, 2008 (while also terminating briefing on Defendants November 21, 2007 Appeal from Judge Rushing's off-the-record turnover of $10,118 of Defendants' frozen assets to Plaintiff's attorney). With no Case Record numbering to substitute for the Chronological Index (which ended up taking three months to update), the June 26, 2008 hearing on the $10,118 asset turnover was cancelled.

Defendants filed a motion directed to the Presiding Judge of the Sonoma County Superior Court, challenging Judge Chouteau's "No Notice" change in designation of the record policy, but this was referred back to Judge Chouteau, who took no action on the motion until he signed an order which denied it on April 18, 2008. Then **another five**

weeks went by, before Judge Chouteau's "No Notice" motion denial was filed on May 23, 2008.

All of these interruptions in appeal briefing (or refusal to even allow briefing) and refusal to provide file security (or to allow file-integrity-protection counter-measures by Defendants) makes the secret trial policy for unlawful detainer actions (under state law) much more destructive of defendants' rights in Sonoma County. Without such abuses, many of the other procedural evasions in this case (by Plaintiff's counsel in collaboration with Judge Rushing) would not have been possible. Taken in its totality,**[11]** the way Unlawful Detainer trials are handled in Sonoma County, violates the public trial by jury**[12]** mandate of the Sixth and Seventh Amendments.**[13]**

California Transport v Trucking Unlimited (1972) 404 U.S. 508, 510 affirms: "The right of access to the courts is indeed but one aspect of the right to petition. See *Johnson v Avery* (1969) 393 U.S. 483, 485." *Johnson v Avery* cites its unconstitutional infringement of the right to petition as: "Only when he promised to refrain from assistance to other inmates was he restored to regular prison conditions and privileges." At our fork in the road, when we

had to decide whether to throw in the towel and pay $4,000 for giving up without a trial, a key factor in our decision was this question: "My God, what must be happening to other tenants facing eviction in Sonoma County,**[14]** less well versed in what the Rule of Law should be about, than we are?"

In *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 524, the U.S. Supreme Court unanimously reversed a decision (Sixth Circuit Court of Appeal (2001) 246 F.3d 619) to award attorney's fees based mainly (246 F 3d at 629-630) on the fact that "petitioner had filed an unmeritorious suit and realleged previously decided claims."**[15]** *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 524-525, found that the Sixth Circuit had placed an undue burden on the First Amendment right to seek redress of grievances via the courts, saying: "We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights,' *Mine Workers* v. *Illinois Bar Assn.* (1967) 389 U. S. 217, 222, and have explained that the right is implied by '[t]he very idea of a government, republican in form,' *United States v Cruikshank* (1876) 92 U.S. 542, 552.

BE & K Construction Co v NLRB (2002) 536 U.S. 516, 530, emphasizes**[16]** that even after-the-fact penalties on petitioning via the courts raises concerns, but notes:**[17]**

> By analogy to other areas of First Amendment law, one might assume that any concerns related to the right to petition must be greater when enjoining ongoing litigation than when penalizing completed litigation. After all, the First Amendment historically provides greater protection from prior restraints than after-the-fact penalties, see *Alexander* v. *United States*, 509 U.S. 544, 553-554 (1993), and enjoining a lawsuit could be characterized as a prior restraint, whereas declaring a completed lawsuit unlawful, could be characterized as an after-the-fact penalty on petitioning.

We can provide facts to prove that applicability of all the precedents cited above, if given the chance.

FOOTNOTES (NEWLY RELEVANT CASELAW)

Footnote [1]: Because we may have to also use this application as an updating of our April 20, 2009 Petition for Certiorari (pursuant to Rule 25.5), we use Rule 33.1(c) margins here. A copy of Defendants' Motion to Vacate Order of April 17, 2009 and its supporting documents accompanies this application (all of which have been previously provided to the Chief Justice of the California Supreme Court, the Presiding Judge of the Sonoma County Superior

Court and the Real Party in Interest).

Footnote [2]: Defendants request no immediate action, until the Respondent Sonoma County Superior Court has had sufficient time to rule on our April 27, 2009 Motion. We hope that the procedural precedent for handling the prior restraint orders in *Nebraska Press Association v Stewart* (1976) 427 U.S. 539, 545, fn 2 will be followed:

> Petitioners asked the District Court to stay its order. At the same time, they applied to the Nebraska Supreme Court for a writ of mandamus, a stay, and an expedited appeal from the order. In the interim, petitioners applied to MR. JUSTICE BLACKMUN as Circuit Justice for a stay of the State District Court's order. He postponed ruling on the application out of deference to the Nebraska Supreme Court, [citation]; when he concluded that the delay before that court had "exceed[ed] tolerable limits," he entered an order. [citation.]

Footnote [3]: The First Amendment right to petition via the courts does not provide immunity from all burdens one's legal activity may place on the rights of others. But *BE & K supra*, cites a very high threshold for penalizing a litigant for exercising the judicial aspect of the right to petition in *Professional Real Estate Investors (PREI) v. Columbia Pictures Industries* (1993) 508 U. S. 49, 51: "We hold that litigation cannot be deprived of immunity as a sham unless the litigation is objectively baseless." *PREI* (508 U.S. at 62) provides a strict definition of sham litigation: "Under the objective prong of the sham exception, the Court of Appeals correctly held that sham litigation must constitute the pursuit of claims so baseless that no reasonable litigant could realis-

tically expect to secure favorable relief." Squarely applicable governing precedents provide full protection but they are not essential, as *PREI* (508 U.S. at 65) affirms:

> By the time the Ninth Circuit had reviewed all claims in this litigation, it became apparent that Columbia might have won its copyright suit in either the Third or the Seventh Circuit. Even in the absence of supporting authority, Columbia would have been entitled to press a novel copyright claim as long as a similarly situated reasonable litigant could have perceived some likelihood of success.

Footnote [4]: The Order only quotes the underlined parts of CCP§ 391(b)(1)'s qualifying threshold: "In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been finally determined adversely to the person." (Id. at 6:3-4)

Footnote [5]: Judge Rushing's Order lists (3:4-15):

> **1)** Court of Appeal Case A121269, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 4/21/08, Writ Petition denied 4/25/08;
> **2)** Court of Appeal Case A123226, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 11/19/08, Writ Petition denied 11/26/08;
> **3)** Court of Appeal Case A123622, *Halliwell et al v Superior Court of Sonoma County*, Petition for Writ of Mandate filed 1/2/09, summarily denied 1/2/09;

4) Supreme Court Case S163276, *Halliwell et al v Superior Court of Sonoma County*, Petition for review of civil appeal filed 5/5/08, Petition denied 6/11/08; and
5) Supreme Court Case S168827, *Halliwell et al v Superior Court of Sonoma County*, Petition for review of civil appeal filed 12/8/08, Petition denied 1/21/09.

Footnote [6]: The California Supreme Court affirms in *People v Shuey* (1975) 13 Cal 3d 835, 841:

> Fortunately, fundamental rules of appellate review are specifically designed to preclude the possibility of this type of multiple litigation of the same issue. Among these is the doctrine known as the "law of the case" or the "law of the former decision." In the early case of Tally v. Ganahl (1907) 151 Cal. 418, 421, this rule was aptly described. "The doctrine of the law of the case is this: That where, upon an appeal, the supreme court, in deciding the appeal, states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal, and, as here assumed, in any subsequent suit for the same cause of action, and this although in its subsequent consideration this court may be clearly of the opinion that the former decision is erroneous in that particular."

Footnote [7]: Pursuant to CCP § 916(a) & 917.1(d), fees-and-costs-only judgments are automatically stayed until appeals are exhausted (without posting an appeal bond), in accordance with to governing

precedents such as *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655; *Nielsen v Stumbos* (1990) 226 CalApp.3d 301, 303; and *Vadas v Sosnoski* (1989) 210 Cal.App.3d 471, 474-475).

Footnote [8]: CCP § 1161.2(c) says [emphasis on the word "**and**" below is in Sonoma County's notice to tenants]:

> [A]ccess to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff **and** one defendant in the action **and** provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number **and** can establish through proper identification that he or she lives at the subject premises. (CR-044)

Footnote [9]: In exchange for this exclusion of outside help, defendants in Unlawful Detainer actions are supposed to be protected by Local Rule 2.2E, which limits their attorney's fees liability (in the normal court trials defendants are encouraged to accept) to $375. However, when Judge Nadler was acting as a mediator, he did not object when Charles Jensen set an UNREVIEWABLE payment of $4,000 as a condition for allowing defendants to leave voluntarily, after allowing them a reasonable period for them to find somewhere else to live. Defendants tried to make this outright attempted extortion part of their argument of bad faith by Plaintiff's counsel, but Judge Rushing threatened them with a contempt of court sanction if they said a word about this to the

jury. (See Transcript at 155:1-7)

Footnote [10]: Defendants are also supposed to be protected by Local Rule 2.2D (which bars the use of Tentative Rulings, which in other cases can deprive unrepresented litigants of a hearing, if they do not renew their request for one between 2 and 4 PM on the preceding day). Judge Rushing has repeatedly flouted Rule 2.2D, with all three of her fees awards. She makes a Tentative Ruling which says nothing about fees-related issues, but only serves to create obstacles which Defendants must overcome to prevent hearing cancellation (or secure a replacement hearing). Then during the hearing, Plaintiff's counsel says nothing at all in defense of his case, and Defendants are not allowed to conduct their own case. Judge Rushing then signs an unexplained (September 25, 2007, May 6, 2008, February 10, 2009) Order which has nothing of substance in it, except for reaffirming the fees award made in her Tentative Ruling.

Footnote [11]: The Bill of Rights is not FULLY applicable to the states, but many of its provisions are considered to be essential to Due Process of Law, and have therefore been binding on the states since the Fourteenth Amendment was ratified. Thus *Twining v State of New Jersey* (1908) 211 U.S. 78, 99 identifies the essential element of the incorporation doctrine "This contention requires separate consideration, for it is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, *because a denial of them would be a denial of due process of law.*"

Footnote [12]: Article I, § 16 of the California Constitution provides: "Trial by jury is an inviolate right, but in a civil cause three-fourths of the jury may render a verdict." The rendering of a verdict without unanimity is not subject to challenge on Seventh Amendment grounds. This is so even though *Minneapolis & Saint Lous Railroad Co. v. Bombolis* (1916) 241 U.S. 211, 216 affirms: "It has been so long and so conclusively settled that the Seventh Amendment exacts a trial by jury according to the course of the common law – that is, by a unanimous verdict [citations]." However, *Bombolis, supra*, rejected a challenge to a 5/6 verdict threshold under the Minnesota State Constitution and its statutory law. *Bombolis* rejected the contention that "the defendant was by the Seventh Amendment to the Constitution of the United States entitled to have its liability determined by a jury constituted and reaching its conclusion according to the course of the common law, and hence to apply the state statute would be repugnant to the Seventh Amendment." *Bombolis* (241 U.S. at 217) cites *Twining, supra*, but does not find unanimity to be an essential element of Due Process.

Footnote [13]: However, where secrecy can be shown to be a violation of Due Process, in a state which provides a guarantee of jury trials in civil matters equivalent to that of the Seventh Amendment, the public trial mandate of the Sixth Amendment may be federally enforceable in state court. The first threshold consideration is whether an eviction is sufficiently akin to imprisonment, to make the protections for criminal defendants applicable. Because of Eight Amendment jurisprudence which has greatly improved jail conditions, the

absence of shelter and available meals, may well make eviction a more substantial immediate penalty than a jail sentence. Where secrecy is a deliberate device for making it difficult for unlawful detainer defendants to learn of their rights, the logic of *Gideon v Wainwright* (1963) 372 U.S. 335, 345 applies. In Unlawful Detainer actions, 90% of defendants are self represented, so this aspect of *Gideon, supra*, provides a close parallel: "*Even the intelligent and educated layman has small and sometimes no skill in the science of law.*" It is the purpose of CCP § 1161.2(c) to keep consultants from remedying this situation. And in Sonoma County Superior Court, the fortified version of this statute nearly guarantees the tenant will lose, thus creating another Gideon parallel: "*He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.*"

Footnote [14]: *Mine Workers v Illinois Bar Assn.* (1967) 389 U.S. 217, 221, describes the lower court ruling which the United States Supreme Court overturns: "The Illinois Supreme Court rejected petitioner's contention that its members had a right, protected by the First and Fourteenth Amendments, to join together and assist one another in the assertion of their legal rights by collectively hiring an attorney to handle their claims." *Mine Workers v Illinois Bar Assn.* (1967) 389 U.S. 217, 222 explains its reasoning:

> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both

> in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." Thomas v. Collins, (1945) 323 U.S. 516, 530, See De Jonge v. Oregon (1937) 299 U.S. 353, 364. The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. Schneider v. State (1939) 308 U.S. 147; Cantwell v. Connecticut (1940) 310 U.S. 296.

Mine Workers v Illinois Bar Assn. (1967) 389 U.S. 217, 225 concludes: "The decree at issue here thus substantially impairs the associational rights of the Mine Workers and is not needed to protect the State's interest in high standards of legal ethics."

Footnote [15]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 526-527 cites as a supporting precedent, the holding of *Bill Johnson's Restaurant, Inc. v NLRB* (1983) 461 U.S. 731, 737, which had overturned an order to the owner "to withdraw its suit and pay the defendants' legal expenses" because of "First Amendment and federalism concerns" and held "that the Board may not decide that a suit is baseless by making credibility determinations, as

the Administrative Law Judge had done, when genuine issues of material fact or state law exist." (461 U.S. at 745-747)

Footnote [16]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 532, notes that "the genuineness of a grievance does not turn on whether it succeeds." The opinion explains:

> Indeed, this is reflected by our prior cases which have protected petitioning whenever it is genuine, not simply when it triumphs. See, *e. g., Professional Real Estate Investors v. Columbia Pictures* (1993) 508 U. S. 49, 58-61 (protecting suits from antitrust liability whenever they are objectively or subjectively genuine) Mine Workers v Pennington (1965) 381 U.S. 657, 670 (shielding from antitrust immunity any "concerted effort to influence public officials"). Nor does the text of the First Amendment speak in terms of successful petitioning – it speaks simply of "the right of the people . . . to petition the Government for a redress of grievances."

Footnote [17]: *BE & K Construction Co v NLRB* (2002) 536 U.S. 516, 532 defends losing law suits:

> Like successful suits, unsuccessful suits allow the "'public airing of disputed facts,'" *Bill Johnson's Restaurant, Inc. v NLRB* (1983) 461 U.S. 731, 743 (quoting Balmer, Sham Litigation and the Antitrust Law, 29 Buffalo L. Rev. 39, 60 (1980)), and raise matters of public concern. They also promote the evolution of the law by supporting the development of legal theories that may not gain acceptance the first time around. Moreover, the ability to lawfully prosecute even unsuccessful

suits adds legitimacy to the court system as a designated alternative to force. See Andrews, A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right, 60 Ohio St. L. J. 557, 656 (1999) (noting the potential for avoiding violence by the filing of unsuccessful claims).

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FILED

April 17, 2009

Case No. MCV-191306

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants
_____/

FINDINGS AND ORDER AFTER HEARING ON PETITION FOR A FINDING OF VEXATIOUS LITIGANT PER CCP § 391

HISTORY

The Honorable Elaine Rushing, Judge of the Superior Court for Sonoma County, on the court's own motion issued an Order to Show Cause why Mr. Parker and Mr. Halliwell should not be found to be vexatious litigants per CCP § 391. Out of an abundance of caution Judge Rushing felt that a

visiting judge should review the situation and make the appropriate order. This court was appointed by the Chief Justice and assigned to hear the matter. This court reviewed all of the files relating to the Parker and Halliwell litigation in March of 2009. There were then 29 volumes. Prior to the hearing on April 14, 2009, the court reviewed the most re-cent files. Mr. Parker and Mr. Halliwell arrived at the hearing and initially sought a continuance. The stated reason was their need to prepare a brief to the United States Supreme Court. This motion was withdrawn and would have been denied if not withdrawn. They also presented additional briefing of 46 pages opposing any vexatious litigant finding.

On June 1, 2007, an unlawful detainer case was filed against Mr. James Parker (Paxinos v Parker, Case No. MCV 191306). Mr. Mike Halliwell was joined in the litigation pursuant to his prejudgment claim of right to possession of the premises since Mr. Parker had sublet part of the premises to him. Plaintiff claimed that this was not allowed by the rental agreement. Mr. Parker and Mr. Halliwell claimed that Mr. Paxinos had orally waived the "no sublet" agreement. The premises that Mr. Parker

had rented was 1041 Copeland Creek Drive in the Meadow Pines area. This is a subdivision governed by a homeowners association. Prior to service of the 60 day notice on Mr. Parker, the homeowners association had warned Mr. Paxinos that it would take action against him because of the alleged threatening behavior by his tenant Mr. Parker towards other tenants. Eventually, on March 28, 2007, the homeowners association fined Mr. Paxinos for four incidents of threats by Mr. Parker. Mr. Parker denied any threatening behavior. Defendants waived jury. Upon their motion and over plaintiff's objection, the court set aside the waiver and granted a jury trial. A two day jury trial was held. Plaintiff's case took 18 minutes to present while defendants consumed 11 hours. A verdict for plaintiff resulted. The jury specifically found that (1) There was a written rental agreement in effect between landlord and tenant Parker. (2) The landlord did not orally modify the rental agreement with his tenant Parker to allow subtenants; and (3) That the landlord issued the 60 day notice for a valid reason. Plaintiff was represented by Mr. Charles Jensen and defendants represented themselves.

Plaintiff received a judgment for $938.50 rental damages, $385.00 court costs, and restoration of the premises. The court deferred ruling on a request for attorney fees pursuant to the written rental agreement as to Mr. Parker. (Mr. Halliwell was not a signatory to any agreement with an attorney fees clause and thus had no liability under the lease). None the less Mr. Halliwell filed a 50 plus page document entitled "Defendants Memorandum in Response to Plaintiff's July 3, 2007 Settlement Inquiry". This curiously titled, voluminous document – to the extent it can be understood – seems to be an opposition to Mr. Jensen's claim for attorney fees. Mr. Jensen filed a brief response to Mr. Halliwell's documents indicating that there was no proceeding against Mr. Halliwell claiming attorney fees. Mr. Halliwell then filed numerous motions, affidavits, and requests for ex parte relief concerning the attorney fees issue. Mr. Halliwell filed various other post judgment motions and on July 24, 2007, Mr. Halliwell filed a notice of appeal. On August 28, 2007, the trial judge, the Honorable Elaine Rushing, held a hearing on the attorney fees issue. Mr. Halliwell was also present and improperly (he is not

an attorney representing Mr. Parker) sought to address the issue on Mr. Parker's behalf. Judge Rushing granted the attorney fee motion. On September 5, 2007, at the request of Mr. Parker and Mr. Halliwell, Judge Rushing set aside her order and rescheduled the attorney fee hearing to September 25, 2007. At that time, Judge Rushing explained at length to Mr. Halliwell that he would not be allowed to represent Mr. Parker. Attorney fees of $10,000 were granted against Mr. Parker. Despite Judge Rushing's explanation and warning, Mr. Halliwell filed multiple documents after the September 25, 2007 hearing attempting to attack the attorney fees order. He continues to this day to litigate the issue.

Mr. Parker and Mr. Halliwell pursued appeals with the Sonoma County Superior Court Appellate Division. They filed numerous motions and augmentations to the record. They filed at least seven appeals or other variously labeled proceedings with the Appellate Department. These were filed on July 24, 2007, August 29, 2007, September 26, 2007, October 17, 2007, February 1, 2008 and May 27, 2008. The record as supplemented by the defendants for the two day unlawful detainer trial is now

over 1,538 pages long, not including transcripts. Most of what was filed was frivolous and duplicative. Their documents are often completely undecipherable in that the reader is unable to determine what is at issue or how the material relates to the Unlawful Detainer action. They each filed opening briefs in four of the appeals which in reality are one vast brief far exceeding the court's limits on the length of moving papers (15 pages unless permission is otherwise granted). It is apparent that this tactic was adopted to circumvent court rules on the length of briefs. Mr. Parker and Mr. Halliwell then filed motions to the Presiding Judge requesting that all pending appeals (then between 4 and 6) be heard at separate proceedings. The only conceivable object of this tactic is delay. The multiple appeals filed by Mr. Parker and Mr. Halliwell of the Unlawful Detainer judgment was denied by the Appellate Division of the Sonoma County Superior Court. All the issues were thus fully determined against them as defined in CCP § 391.

In late 2008 an Order of Examination proceeding was commenced by Plaintiff in an attempt to collect his judgment. Mr. Halliwell again attempted to

represent Mr. Parker and was again denied. After multiple hearings and warnings Mr. Parker was held in contempt of court for refusing to answer questions propounded by Plaintiff's attorney.

Mr. Parker and Mr. Halliwell also filed a number of appeals, interlocutory appeals, and/or petitions for writ of mandate in the First District Court of Appeal and Supreme Court. These include:

A121269 in the First District Court of Appeal, Petition for Writ of Mandate filed April 21, 2008, denied April 25, 2008.

A123226 in the First District Court of Appeal, Petition for Writ of Mandate filed November 19, 2008, denied November 26, 2008.

A123622 in the First District Court of Appeal, Petition for Writ of Mandate filed January 2, 2009, summarily denied January 2, 2009.

S163276, in the California Supreme Court, Petition for review of Civil Appeal filed May 5, 2008, denied June 11, 2008.

S168827, in the California Supreme Court, Petition for review of Civil Appeal filed December 8, 2008, denied January 21, 2009.

S169634, in the California Supreme Court, Petition for review denied February 18, 2009.

These appeals all addressed issues which had been litigated and relitigated in the trial court and the Appellate Department of the Superior Court. A review of these appeals shows that they were utterly without any merit. Mr. Parker and Mr. Halliwell have never prevailed in any action. All cases were fully determined adversely against them as defined in CCP § 391(b)(1).

Mr. Parker and Mr. Halliwell have throughout their litigation accused Mr. Jensen, Judge Rushing, Judge Nadler, Judge Boyd, and Judge Chouteau (Presiding Judge of the appellate panel) as well as others, of engaging in a massive conspiracy to defeat their claims and "steal" money from them. There legal writings are replete with accusations of dishonesty, theft and removal or alteration of court files. There is absolutely no support for their bizarre claims.

They had a two day trial by a jury of their peers. They presented 11 hours of defense evidence contrasted to plaintiffs 18 minutes. They are unable to accept the verdict of their peers. They are unable to

accept the fact that they have lost every single appellate action. The money "stolen" from them is attorney fees ordered against Mr. Parker pursuant to a clause in the lease. **Unless restrained by a prefiling order they will never stop litigating.** This simple unlawful detainer case is now 35 volumes long. It takes up several feet of shelf space. It was transported to my chambers on a large multiple level wheeled trolley. The defendants have filed over 11,000 pages of pleadings in their various actions and venues. There has been an unconscionable waste of the court's time and resources. The real tragedy of this case is that the original plaintiff, Mr. Paxinos, has had to continue to pay his lawyer tens of thousands of dollars to review the materials and appear in court on this vexatious litigation.

FINDINGS

Mr. Parker and Mr. Halliwell are found to be Vexatious Litigants within the meaning of CCP § 391.

I

Mr. Parker and Mr. Halliwell have within the last four years prosecuted, or maintained in propria persona, five litigations . . . that have been . . .

finally determined adversely to them. CCP § 391(b)(1). Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases. They did however prosecute at least 14 non-meritorious appeals in the Appellate Division of the Superior Court of Sonoma County, the First District Court of Appeal and the California Supreme Court. See *McColm v Westwood Park Association* (1998) 62 Cal.App.4th 1211.

II

Mr. Parker and Mr. Halliwell have repeatedly relitigated or attempted to relitigate, in propria persona, the validity of the determinations against them where the findings against them had been finally determined. CCP § 391(b)(2)(I) and (II).

III

Mr. Parker and Mr. Halliwell, while acting in propria persona, repeatedly filed unmeritorious motions, pleadings, or other papers, and engaged in other tactics which were frivolous or solely intended to cause unnecessary delay. CCP § 391(b)(3).

ORDERS AS TO BOTH MR. PARKER AND MR. HALLIWELL

Each individual having been found to be a vexatious litigant it is ordered that:

1. In Sonoma County, James Parker and Michael Halliwell may not file any further litigation in propria persona. "Litigation" is defined as any new case, any petition, application, motion, or any other document no matter how entitled or described in any existing case, or any appeal or request to the appellate division no matter how entitled. This order does not apply if the Presiding Judge of the Sonoma County Superior Court first approves filing of the Litigation. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge may require as a condition to filing the document that security be posted to cover the opposing parties attorney fees, and costs as described in CCP § 391.7

2. Mr. Parker or Mr. Halliwell may not file any new litigation, as previously defined, in propria persona in any court in California, of any nature unless the Presiding Judge of that County Superior Court first approves the filing of that document. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge may require as a condition to filing the document that security be posted to cover the

opposing parties attorney fees, and costs as described in CCP § 391.7

3. Neither Mr. Parker or Mr. Halliwell may file any appellate litigation, as previously defined, in propria persona, unless the Presiding Judge of the Court of Appeal or of the Supreme Court first approves the filing of that document. Mr. Parker and Mr. Halliwell are warned that the Presiding Judge of the Court of Appeal or Supreme Court may require as a condition to filing the document that security be posted to cover the opposing parties attorney fees, and costs as described in CCP § 391.7

4. If Mr. Parker or Mr. Halliwell seek to file any new litigation in propria persona, as previously defined, they must first file a petition with the Presiding Judge of the court in which the new litigation is to be filed. This request must be accompanied by an affidavit under penalty of perjury which provides facts and legal authority explaining to the court with specificity why this litigation has merit. See *Fresno County Department of Children and Family Services vs. R.H.* (2009) DJDAR 1265.

5. In the event that Mr. Parker or Mr. Halliwell are allowed by a Presiding Judge to file any new

litigation, as previously defined, in propria persona in any court in California, they must serve written notification within ten calendar days to any adverse party of their status as vexatious litigants.

6. In the event that Mr. Parker or Mr. Halliwell are allowed by a Presiding Judge to file any litigation in propria persona in any case they shall not exceed any limitation on length of pleadings in the applicable Rules of Court. In Sonoma County that limit is 15 pages.

7. Mr. Parker and Mr. Halliwell are warned that any violation of this order is punishable as contempt.

DATED: April 16, 2009

DEAN A. BEAUPRE, RETIRED
JUDGE OF THE SUPERIOR COURT
Sitting on Assignment from
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FILED

April 17, 2009

Case No. MCV-191306

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

ORDER TO THE CLERK
OF THE COURT

JAMES PARKER, et al.,
Defendants
_____/

TO: THE CLERK OF THE COURT

Mr. James Parker and Mr. Michael Halliwell (Case No. MCV-191306 and other cases) have been found to be vexatious litigants within the meaning of CCP § 391. See attached finding and order.

The Clerk of the Court is to notify the Judicial Council by providing a copy of the prefiling order as well as this order. The Clerk of the Court is to take any other steps required to notify the Judicial

Council that a prefiling order exists as to Mr. Parker and Mr. Halliwell.

The Clerk of the Court is not to file any litigation in propria persona presented by Mr. Parker or Mr. Halliwell unless the document is approved for filing by the Presiding Judge (CCP § 391.7). "Litigation" is defined as any new case, any petition, application, motion, or any other document no matter how entitled or described in any existing case or any appeal or request to the appellate division no matter how entitled.

Should Mr. Parker or Mr. Halliwell attempt to file any further litigation in propria persona without approval of the Presiding Judge, the documents will be stamped as "received, but not filed". The incident shall be reported to the Presiding Judge for possible contempt proceedings.

Mr. Halliwell and Mr. Parker have been provided a copy of this order.

DATED: April 16, 2009

DEAN A. BEAUPRE, RETIRED
JUDGE OF THE SUPERIOR COURT
Sitting on Assignment from
Administrative Office of the Courts